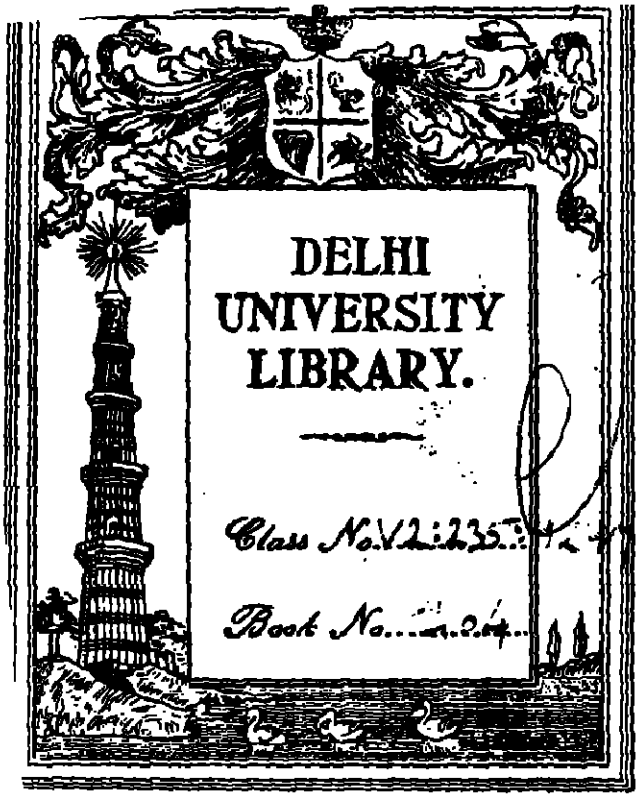
INDIAN ELECTION PETITIONS



PREFACE

The fourth volume of Indian Election Petitions contains the reports of election cases decided after the fourth general election held under the Government of India Act 1919 (9 and 10 Georg 5 ch. 101), except in case of Burma, where it relates to the 3rd general election. This divergence is due to the fact that reforms in Burma were introduced two years later. In the ordinary course of events, the fourth general election ought to have been held in 1929. In Bengal and Assam the general elections were held in that year, but in the case of the Assembly and other Councils, the period was extended by one year, until after the publication of the statutory commission.

The first general election was held in 1920, under the shadow of the famous non-cooperation movement with its slogan of boycott of reformed councils. In the "confused and suspicious atmosphere of that year the reforms, those auguries of a new era"(1) exercised but little attraction over the majority of those to whom they would have made their strongest appeal. "First elections were fought at a time when large sections of electorate had abstained under Mr. Gandhi's influence from exercising their right, and when the candidates themselves had to endure much obloquy from fellow countrymen whose esteem they highly valued."(2)

Colossal ignorance of the law and practice of elections and the power of a vote added to the difficulties. Instances of people even making obeisance before the ballot box were mentioned in some of the polling stations. It is however, remarkable, how few were the cases in which elections were avoided on the ground of irregularities.

At the first election there was thus no party contest, and the only point of contest seemed to be whether people should go to the poll or not, and the Liberals, the only party who believed in working the reforms for whatever they were worth, entered the Councils in sufficient numbers to be able to form successful ministries.

A change however occurred, at the time of the second general election held in 1923. The formation of Swarajya party in 1923 brought the Congress into the field as a formidable rival to the Liberals. The elections in 1923 were hotly contested, and we find in the reported cases the growth of a distinct party spirit.

1. Indian Year Book 1921—22. 2. Indian Year Book 1923—24.

"The formation of the Swarajya party at the beginning of 1923, and the revival of Muslim enthusiam for their League, which after a temporary eclipse, had been once more set on its feet by Mr. Jinnah in the middle of 1924, and the constantly growing strength of the Hindu Mahasabha movement all combined to cause a decline in the popularity of the Congress. At the time of the third general election in 1926, the Congress was not so powerful as in 1923, but due to the strength of parties other than the Congress party, the elections were as keenly contested as in 1923.

The All White Statutory Commission was appointed in 1928, and its visit to India was marked by a tremendous outburst of national feeling against it. The movement for the boycott of Simon Commission once more brought the Congress into prominence, and even though the elections were, except in the case of Bengal and Assam, postponed for a year, the elections of 1930 were more unreal than the elections of 1920. In some constituencies dummy candidates, who were men of no substance, were set up, and even returned.

From the lawyers' point of view, the reported cases are of great use. There is a marked tendency to follow the reported Indian cases. The present volume will show that cases reported in the first three volume have been invariably referred to and even followed. It is certain that the tendency to follow reported Indian election cases will grow and the case law in India will come to be regarded as a sure guide for the solution of doubtful points of law or election practice and procedure, as it is in England. It is certain that in time, Indian case law will become complete in itsself, and thus render reference to English reported cases unnecessary.

It would appear that in several particulars Indian law differs from English law, points on which, it is submitted, it is necessary to bring Indian in a line with English law, in the interest of fairplay and purity of elections. The first point is the fixing of a maximum for expenses to be incurred at elections. At present we are faced with the disgraceful spectacle of monied and landed aristocrats squandering Rs. 20, 000 and over for a seat in a provincial Legislative Council, which necessarily involves corrupting the electorate. If a maximum has been found necessary in a rich and educated country like England, it is all the more necessary in India.

The second point is the difference regarding the effect of non-

observance of election law and rules on the election. In England, if it is proved that any rule or law has been violated, or that the officers entrusted with the carrying out of the provisions of election law, have erred, it is presumed that such irregularities or non-compliance with the law have materially affected the result of the election, and the burden is cast on one who has benefitted by it, of proving that the proved transgressions could not have turned the scales of the election. In India, however, we have the anamolous position, that even if a breach of law is proved, the election will not be set aside, unless the petitioner also shows that, but for the proved irregularities, the successful party would not have got the majority secured by him. In England, a Returning Officer can even be sued for damages, if a candidate suffers loss by the negligent and wrongful acts of such officer. In India, I have even come across with a case in which a Returning Officer at a District Board election, who was also one of the polling officers, while marking the voting papers of illiterate voters, put their electoral number on them, with the result that a very large number of votes of one candidate were rejected on the ground that they contained a mark by which the particular voters could be identified. The Returning Officer, while giving evidence at a petition that followed, stated that he did not know election law and rules, that he had never even looked into them, and that he had not even seen the typed copy of instructions sent to him. This statement, he made, without the least hesitation, and apparently without even thinking that he had done anything which he should not have done. There is no reason why a premium should be placed on ignorance or breach of law in India.

The third point on which the law requires to be brought into a line with the law in England, is the right to cast an open vote. In England, no one can cast an open vote, unless he satisfies the polling officer that he is either illiterate, or, that he is by reason of some physical disability or otherwise, incapable of casting a vote by ballot. It may be, that a large majority of voters in England are literate, but there seems to be no reason why even graduates should be allowed to cast an open vote in India. The only result of open voting is that freedom of voting is taken away. The rules should therefore be so altered as to make it impossible for literate persons from casting an open vote.

JAGAT NARAIN

List of Cases

REPORTED IN VOLUME 4

TABLE OF CASES CITED IN VOLUME 4

Table of Cases Cited

ENGLISH

Table of Cases Cited

INDIAN

THE REPORTS

BOMBAY LEGISLATIVE COUNCIL AHMADABAD AND SURAT CITIES MUHAMADAN URBAN CONSTITUENCY

ABDUL RAHMAN KHAN KARIM KHAN RISALDAR } *Petitioner*

versus

K. B. MAHBUB MIAN IMAM BAKHSH KADRI

Respondent

A person is said to reside at a place where he keeps at least a sleeping apartment, but an uninterrupted living at such place is not contemplated. It is not necessary that he should have lived uninterruptedly in the lodging during the whole period, or that the lodging should be his only place of residence : it is quite sufficient if he has the power to occupy the lodging when he pleases.

For constructive legal residence two things are necessary:— (1) the liberty of returning at any time to the house or apartment and (2) no abandonment of the intention to return whenever it may suit the party's pleasure to do so.

Petitioner and the Respondent were the only two candidates from the Muhammadan Urban Ahmadabad and Surat cities constituency for the membership of the Local Legislative Council. Respondent was declared successful and the petitioner disputes his election on the ground that the respondent did not, at the date of his nomination, possess the qualification as to his residence required by rule 6 (1) (*b*) of Bombay Electoral Rules. He therefore prays that the election of the Respondent should be declared void and claims that he should be declared duly elected as a member from that constituency.

Rule 6 (1) (*b*) is as follows :—"No person shall be eligible for election as a member of the Council to represent a general constituency unless.....he has for a period of six months immediately preceding the last date fixed for the nomination of candidates in the constituency resided in the constituency."

Petitioner's contention is that Respondent being the Chief Judicial Officer of the Junagadh State (a fact admitted by the Respondent) and having been serving there during the period

of qualification (4th February to 4th August, the latter being the date fixed for nomination of candidates) could not be said to have complied with the requirements of the provision and was therefore disqualified for standing as a candidate and thus disqualified from being elected. Respondent admits having gone to Junagadh during qualifying period for disposal of judicial work, but he contends that he used to go there at his own convenience on days of his choice to dispose of the work and the only contractual obligation incurred by him was to dispose of the work at his own choice and he was at liberty to return to his residence at Ahmadabad at any time he chose without previous permission of any authority of the state. It is not disputed that he owns besides the house, which his wife and family occupy during his absence, and where he lives when he is at Ahmadabad, other houses, that he maintains a motor car at Ahmadabad and is connected with several local institutions, religious, charitable, and educational in various capacities, such as president, vice-president, etc., and that he has been attending a number of meetings of those institutions during the period required for qualification to stand as a candidate. It is further admitted that the Respondent was actually residing as stated by him for 71 days in Ahmadabad and 2 days in Surat during this period. In other words, out of a qualifying period of 182 days he has actually resided in the constituency less than one half of it; the bulk of the period he has not actually resided there. Respondent, however, contend that he has constructively resided in Ahmadabad during the 109 days, and this constructive residence was sufficient to qualify him. The law is clearly laid down by Erle C. J. in Powell *v.* Guoet (34 L. J. C. P. 69) where he says "I entirely subscribe to the doctrine so clearly laid down in Elliot on Registration, 2nd edition 204, where the learned author says that in order to constitute residence, a party must possess at the least a sleeping apartment, but that an uninterrupted abiding at such dwelling is not requisite' : 'Absence, he continues, no matter how long, if there be the liberty to return whenever it may suit the party's pleasure or convenience so to do, will not prevent a constructive legal residence." He (Elliot) then goes on further to show how a party may debar himself of the liberty of returning to such dwelling and illustrates it by giving certain examples, to which Erle C. J. adds the instance of a prisoner guilty of a criminal act, who cannot return to his dwelling when he chooses. Ford *v.* Hart 9 Law Reports Common Pleas cases (1873-74) p. 273 was the case of an Army Officer who, when on leave, used to reside at the house of his mother occupying apartments there,

which were always reserved for his use. He was unmarried and had no other home than his mother's house. Keatings J., while holding that he was not qualified to be a voter, said "Being an officer in the Queen's service he was no longer a free agent. He could not move about at his own will and pleasure... .....He could not return within the borough without the leave of his Commanding Officer. "In the same case Brett J. went further and said." The Respondent voluntarily put himself into the position of not being able to return to the City of Exeter when he pleased. When the person, in fact lives elsewhere and cannot by law return to the borough without the permission of another, it seems to me to be impossible to say that there is an intention to return within the meaning of the term as applied to the doctrine of constructive residence." Halsbury, the Laws of England, vol. 12, p. 177, paragraph 367, states the requirements of constructive residence thus : "It is not necessary however, that he should have actually lived uninterruptedly in the lodgings during the whole period, or that the lodging should be his only place of residence; it is sufficient if he has the power to occupy the lodgings when he pleases."

For a constructive legal residence English cases lay down two requirements : (1) The liberty of returning at any time to the house or apartments and (2) no abandonment of the intention to return whenever it may suit the party's pleasure to do so...Ford *v.* Hart shows that the moment you enter such service as makes your movements or freedom dependent on the will or pleasure or permission of another, you are sacrificing your liberty and abandoning the intention of returning whenever it suits you so to do. In order to bring his case within the purview of above decisions, the burden lies on the Respondent to show that by accepting service in Junagadh state, he did not give up his liberty of freedom of movement in the order of appointment of Respondent (Exh. 6 dated 15th November 1927) published in the state Gazette, we find the following terms of his appointment (1) salary Rs. 1,750 (2) free conveyance and (3) A furnished bungalow." The most material condition—the condition vital to this case, is not there. The order is complete in itself and is clear.....We find that by accepting service under the terms set out in the appointment order, Exh. 6, Respondent had undertaken to work as any other ordinary officer of the state, and in doing so voluntarily placed himself in a position which debarred him from returning to Ahmadabad whenever he liked, and that the effect of such acceptance of service is an abandonment of the intention to return within

the meaning of the term as applied to the doctrine of constructive residence. He would, therefore, not be qualified to stand as a candidate within the meaning of rule 6 (1) (*b*).

We report that the election of the Respondent is void and that the petitioner has been duly elected in his place.

Costs of setting up of the tribunal to be paid by the petitioner is the first instance. The Respondent to pay the petitioner's costs incidental to the setting up of the Commission and Rs. 150 in addition, the same being the amount of his costs. Respondent to bear his own costs.

KRISHN LAL M. JHAVERI
F. X. DE SOUZA
V. G. DALVI.

UNITED PROVINCES LEGISLATIVE COUNCIL
AGRA DISTRICT
NON-MUHAMMADAN RURAL

PEAREY LAL (*Petitioner*)

versus

MUNSHI AMBA PRASAD (*Respondent*)

In order to arrive at the real meaning of a word it is always necessary to get the exact conception of the aim, scope, and the object of the whole Act. The words of a statute ought to be understood in the sense in which they best harmonise with the subject of the enactment and the object which the legislature has in view. It is not because the words of statute will cover the case, that it is the right sense. Grammatically, they may cover it, but whenever a statute or a document is to be construed, it must be construed not according to the mere ordinary general meaning of the words, but according to the ordinary meaning of the words as applied to the subject matter with regard to which they are used unless there is something which renders it necessary to read them in the sense which is not their ordinary sense in the English language as so applied.

There is nothing in the rules and regulations to show that the word acceptance has been used anywhere in the sense of 'receiving' a nomination paper. On the other hand the various rules

and regulations show that whenever the word "acceptance" has been used it is used in the sense of acceptance of a nomination paper after scrutiny. The function of accepting a nomination paper is more or less a judicial function which requires the exercise of discretion. The function of receiving a nomination is merely a ministerial function which does not require any judicial exercise of discretion, and therefore the persons specified in the third column of the schedule can, subject to the control of the returning officer, perform the function of receiving the nomination papers even when the Returning Officer is not unavoidably prevented from performing it.

The third column of schedule provides the officers (Joint Magistrate and Senior Deputy Collector) who may be appointed to perform the duties of the Returning Officer during the latter's unavoidable absence, but the Returning Officer appointed a junior Deputy Collector to perform the duties; it was held that the appointment was not proper, and any nomination paper received by him or delivered to him was not properly delivered or received.

The word "office" has nowhere been judicially defined but *prima facie* in the case of a Collector the word means the place where he holds his court, conducts the general administration of the district and receives applications.

Where however, the Returning Officer, who was the District Magistrate, was accustomed to do administrative work and receive applications in a room in his bungalow which was called office and this fact was well known to the litigant public and the members of the bar, it was held that the presentation of a nomination paper at the bungalow was sufficient compliance with the rule requiring the presentation of a nomination paper at the Returning Officer's office.

The relief for seat is discretionery and is a separate relief and can be abandoned at the hearing, but it cannot be withdrawn, as in the latter case the right of giving recriminatory evidence would be lost to the Respondent. But if the petitioner abandons the claim for the seat, the relief for the claim of the seat remains, and the Respondent can give Recriminatory evidence.

A candidate who is nominated at an election but who

subsequently withdraws his candidature remains a candidate within the meaning of rule 32 of United Provinces Election rules, and as such, is a necessary party to a petition in which a claim for seat is made.

The words "any person who has been nominated as a candidate at the election" include a person whose nomination paper has been rejected by the Returning Officer. A person who has been nominated as a candidate at any election comes within a different category from a person whose nomination has been improperly rejected, and therefore the candidates who are required to file a return of election expenses are those candidates who have been nominated at the election, and not the candidates whose nominations have been refused.

When the nomination paper of a candidate has been improperly rejected, the ordinary presumption is that the result of the election has been materially affected. Improper rejection or acceptance of a nomination paper is a grave irregularity.

The petitioner, an elector registered in the electoral roll of the N. M. Rural constituency of Agra, has filed the present petition for a declaration that the election of Munshi Amba Prasad, Respondent no. 1, as a member of the U. P. Legislative Council from Agra Rural N. M. constituency be declared void and that the respondent no. 2, be declared to have been duly elected, on the ground that the nomination paper of M. Amba Prasad was impropery presented, and that these irregularities have materially affected the result of the election.

Mr. Amba Prasad contests. The pleadings give rise to the following issues :—

1. Was the nomination paper of Mr. Amba Prasad improperly presented ?

2. Was the nomination paper of Babu Ram properly presented ?

3. Was the district officer Agra, unavoidably prevented from exercising the functions of the Returning Officer on September 1, 2, and 3 ?

4. Was Mr. Hari Shankar, senior Deputy Collector, Agra, within the meaning of column 3 of the schedule referred to in regulations 6 and 7 ?

5. May the petitioner at this stage withdraw his claim that Babu Ram shall be declared to have been elected ?

6. If not, should the petition be dismissed for the petitioner's failure to implead certain persons who were nominated as candidates ?

7. Did Babu Ram file a return of election expenses within the specified period, and if he did not, how does it affect the proceedings ?

8. Was the result of the election materially affected by the wrongful acceptance or non-acceptance of any nomination ?

Issue no. 1 to 4.—There were six persons, Mr. Amba Prasad, Raja Kushalpal Singh, Babu Ram, Ratan Singh, Mr. C. Y. Chintamani and Rao Kishen Pal Singh, who were nominated as candidates for the United Provinces Legislative Council from the Agra Non-Muhammadan Rural constituency during the last general election. Mr. Amba Prasad filed two nomination papers, one on September 1, 1930, and the other on September 2, and he presented both these nomination papers to Mr. Hari Shanker, who was the Treasury officer, and had been receiving nomination papers. Babu Ram, on the other hand, presented his nomination paper to the Returning Officer at his bungalow on September 3, 1930, a few minutes before 3 P. M. along with the deposit money, but the Returning Officer returned his nomination paper for presentation to the officer appointed to take nomination papers. He then came to court and presented his nomination paper to Mr. Hari Shanker at 3. 5 P. M. Mr. Hari Shanker took the nomination paper and in the certificate of delivery noted that the nomination paper was delivered to him at his office at 3. 5 P. M. on Sept. 3, 1930. At the time of scrutiny of nomination papers Mr. Amba Prasad objected to the nomination of Babu Ram, on the ground that his nomination paper was presented after 3 P. M. and was consequently invalid. His objection found favour with the Returning Officer and the nomination of Babu Ram was rejected as filed beyond time. The other four candidates withdrew their candidatures within time. Mr. Amba Prasad was declared duly elected.

The first contention which has been raised in the present case is that the Returning Officer was not unavoidably prevented from performing the functions of receiving nomination papers and therefore could not appoint any one to receive nomination papers, and consequently the presentation of nomination papers by Mr. Amba Prasad to Mr. Hari Shanker was not a proper presentation of his nomination papers.

It is abundantly clear from the evidence adduced in the case that Mr. Williamson was not unavoidably prevented from

performing the functions of a Returning Officer on Sept. 1, 2, and 3,1930, and could have received the nomination papers himself if he had so liked.

The next question which arises is whether the persons specified in the third column of the schedule annexed to the regulations could, when the Returning Officer was not unavoidably prevented, subject to the control of the Returning Officer, perform the functions of the Returning Officer of receiving nomination papers or not. It has been vehemently argued on behalf of the petitioner that in view of the proviso to regulation 7 (1) the persons specified in the third column of the schedule could not perform the functions of the Returning Officer of receiving nomination papers unless the Returning Officer was unavoidably prevented from performing the same. It is said that the word "acceptance" in the said proviso has been used in the sense of receiving a nomination paper, and not in the sense of accepting a nomination paper after scrutiny. The proviso to regulation 7 (1) runs as follows :—

"Provided that no such persons shall perform any of the functions of the Returning Officer which relate to the acceptance of a nomination paper or to the scrutiny of nominations or to the counting of votes, unless the Returning Officer is unavoidably prevented from performing the same, in which case the said functions may be performed in any constituency by the incumbent of the office first specified in the corresponding entry of the third column of the schedule, or if there is no incumbent of that office, by the incumbent of the other office specified therein."

The above proviso shows that the functions of the Returning Officer which relate to the acceptance of a nomination paper or to the scrutiny or counting of votes, cannot be performed by the persons specified in the third column unless the Returning Officer is unavoidably prevented from performing the same. The question arises : what is the meaning of the word "acceptance" in the said proviso.

It has been argued that, having regard to the order in which the various functions of a Returning Officer have been mentioned in the proviso, the acceptance of a nomination paper cannot mean anything but the receiving of a nomination paper as it precedes the scrutiny of nominations. We do not think that the above contention is sound. Rule 15 of the United Provinces Electoral Rules provides that the Local Government shall make regulations regarding the conduct of the election and mentions the scrutiny of nominations first and the appointment of a Returning Officer next, while if the argument advanced

had been correct, the power of making regulations for the appointment of a Returning Officer ought to have come first and the power for making regulations for scrutiny of nominations ought to have come next. The above rule thus shows that the various functions mentioned in the proviso to regulation 7 (1) have not been used in which proceedings at an election are held. In order to arrive at the real meaning of a word it is necessary to get the exact conception of the aim, scope and the object of the whole Act. The words of a statute ought to be understood in the sense in which they best harmonise with the subject of the enactment and the object which the legislature has in view. It is not because the words of a statute or of any document read in one sense will cover the case that it is the right sense. Grammatically they may cover it, but whenever a statute or a document is to be construed it must be construed not according to the general meaning of the words, but according to the ordinary meaning of the words as applied to the subject matter with regard to which they are used, unless there is something which renders it necessary to read them in a sense which is not their ordinary sense in the English language as so applied. Maxwell on the Interpretation of Statutes, Fourth Edition, at page 475 observes as follows :—

"It has been justly remarked that when precision is required no safer rule can be followed than always to call the same thing by the same name. It is, at all events, reasonable to presume that the same meaning is intended for the same expression in every part of an Act. Accordingly in ascertaining the meaning to be attached to a particular word in a section of an Act, though the proper course would seem to be to ascertain that meaning, if possible, from the construction of the section itself; yet, if the meaning can not be ascertained then on the principal that as a general rule a word is to be construed as used throughout an Act in the same sense, several sections may be looked at to fix the sense in which the word there is used."

It is an accepted canon of interpretation that unless there is something in the context to the contrary the same word has the same meaning. Rule 11 (3) provides that a nomination paper should be delivered to the Returning Officer or to such other persons as may be authorised in this behalf by regulation. Rule 11 (7) provides that the Returning Officer on receiving a nomination paper under sub-rule (3) shall perform certain duties of informing the person delivering the nomination paper as to the date etc., of scrutiny. Regulation 10 (1) provides for accepting or rejecting the nomination papers. The above rules clearly

point out that wherever the receiving of a nomination paper is intended the word 'receiving' has been used, and where acceptance after scrutiny is intended the word acceptance is used. There is nothing in the rules and regulations to show that the word acceptance has been used anywhere in the sense of receiving a nomination paper. On the other hand the various rules and regulations show that the word "acceptance" is used in the sense of accepting a nomination paper. After scrutiny the function of accepting a nomination paper is more or less a judicial function which requires the exercise of discretion, and consequently an important function. The function of receiving a nomination paper, on the other hand, is merely a ministerial function which does not require any judicial exercise of discretion. The word "acceptance" in the proviso, therefore cannot mean anything, but that the important function of accepting the nomination paper must be performed by the Returning Officer himself, while the ordinary ministerial function may be performed by the persons specified in the third column of the schedule, subject to the control of the Returning Officer. We are, therefore not satisfied that the word "acceptance" in the proviso means the receiving of nomination papers and are of opinion that the word "acceptance" in the proviso means the acceptance after scrutiny, and the persons specified in the third column of the schedule subject to the control of the Returning Officer can perform the functions of the Returning Officer of receiving the nomination papers even when the Returning Officer is not unavoidably prevented from performing it.

The next question arises whether Mr. Hari Shanker was one of the persons sepecified in the third column of the schedule who, subject to the control of the Returning Officer, could perform the function of receiving nomination papers or not. The third column of the schedule provides for the officers who may be appointed to perform the duties of Returning officers under the control of the Returning Officer. The officers mentioned in the schedule in respect of Agra district constituency are; Joint Magistrate Agra, and Senior Deputy Collector Agra. The note at the foot of the schedule shows that the words "senior Deputy Collector" in the schedule shall be deemed to mean "the senior Deputy Collector having a knowledge of English". The evidence of Mr. Hari Shanker shows that Thakur Laiq Singh was senior to him and was in the district on September 1, 2, and 3, 1930. Thakur Laiq Singh is a graduate and is to be presumed to have a knowledge of English. Thakur Laiq Singh was therefore the senior Deputy Collector,

having a knowledge of English and was in the district on September 1, 2, and 3. There is no evidence on record to show that there was any joint magistrate in Agra on the above dates. Under the circumstances, having regard to the meaning of the words "senior Deputy Collector", as given in the schedule Thakur Laiq Singh was the senior Deputy Collector having a knowledge of English who could have performed the functions of a Returning Officer subject to the control of the Returning Officer, and not Mr. Hari Shanker. There is no provision that the Returning Officer can appoint any senior Deputy Collector whom he likes to perform the functions of a Returning Officer. Consequently the appointment of Mr. Hari Shanker as Returning Officer by Mr. Williamson to perform the functions of a Returning Officer under his control was not proper, and Mr. Hari Shanker was not entitled to receive any nomination paper and any nomination paper delivered to him or received by him was not properly delivered or received.

It was said that Thakur Laiq Singh was in camp, and so the function of a Returning Officer was entrusted to Mr. Hari Shanker, who was the next senior Deputy Collector, but there does not seem to be any provision in the regulations that the Returning Officer could have done so. Rule 11 (3) clearly provides that nomination papers can be delivered to the Returning Officer or to such other persons as may be authorised in this behalf by regulation. There is no provision that it can be delivered to a person appointed by the Returning Officer who is not authorised in this behalf by regulation. Consequently, if Thakur Laiq Singh was in camp, he could have been recalled to headquarters and the functions of the Returning Officer entrsuted to him, and if he had not already gone to the camp he could have been detained to perform the functions of the Returning Officer and if the Returning Officer did not like to recall or detain him, he ought to have performed the functions himself. We are, therefore, of opinion that Mr. Hari Shanker was not the senior Deputy Collector, Agra, on September 1, 2, and 3, 1930, within the meaning of column 3 of the schedule referred in to regulations 6 and 7.

It is an admitted fact that Mr. Amba Prasad presented his nomination papers to Mr. Hari Shanker. In view of our above finding, it is therefore clear that the nomination papers of Mr. Amba Prasad were not properly presented. Moreover, the nomination papers of Mr. Amba Prasad, were presented on September 1 and 2. 1930. The order of appointing Mr. Shanker to performing the functions of a Returning Officer shows that he was appointed to perform the functions of the Returning

Officer on September 3, and not on the 1st and 2nd. We are therefore of opinion that the nomination papers of Mr. Amba Prasad were not properly presented.

The next question arises whether the nomination paper of Babu Ram was properly presented to the District Officer within time and whether it was improperly refused. The evidence of Babu Ram shows that he on September 3, 1930, at about 7 mintes to 3 P. M. took his nomination paper along with money for deposit to the bungalow of Mr. Williamson for presentation at his office, where he was accustomed to work on days other than Tuesdays and Thursdays, and inspite of his vakil showing some ruling that he was the proper person to receive the nomination paper and the deposit, he returned the nomination paper to him to be presented to the Treasury Officer and the money to be deposited there....It is amply clear from the evidence adduced by both the parties that Mr. Williamson was in the habit of working in a room called his office from 11 A. M. to 3 P. M. on the days on which he did not go to court and used to take urgent applications there.

It has been contended that the word "office" in the footnote on the nomination form means the office of the court and not the office of the bungalow. On the other hand, on behalf of the petitioner it is urged that rule 11 does not prescribe any place for presentation and therefore the presentation of a nomination paper to the Returning Officer at his office room at the bungalow complies with the rule. We are of opinion that rule 11 (3) must be read with the form of nomination given in schedule 3, as it provides that the nomination paper must be delivered completed in the form prescribed in schedule 3. The question therefore arises whether the office room in the bungalow of Mr. Williamson is to be deemed to be an office for the purposes of such presentation. The word "office" has nowhere so far as we are aware, been judicially defined, but *prima facie* it means the office of the Collector, where he holds his court, conducts the general administration of the district and receives applications. In the present case there is clear evidence that Mr. Williamson was in the habit of doing his administrative work and of receiving emergent applications in the office of his bungalow from 11 A. M. to 3 P. M. and this fact was well-known to the members of the bar and the litigant public of the place. Hence, although we feel that it would certainly have been better if the Returning Officer had remained in his court office on September 1, 2, and 3 1930, from 11 A. M. to 3 P. M., we consider that the nomination paper of Babu Ram was properly

presented to the Returning Officer at his office within the meaning of the rules.

We are therefore satisfied from the evidence on the record that Babu Ram presented his nomination paper to Mr. Williamson before 3 P. M. within time, and Mr. Williamson was not right in returning it to be presented to the Treasury Officer. We are therefore of opinion that the nomination paper of Babu Ram was properly presented to the District Officer within time.

We therefore hold that the nomination papers of Mr. Amba Prasad were not properly presented, that the nomination paper of Babu Ram was properly presented to the District Officer in time, that the District Officer, Agra was not unavoidably prevented from exercising the functions of Returning Officer on September 1, 2, and 3, 1930, and that Mr. Hari Shanker was not the senior Deputy Collector, Agra, on September 1, 2, and 3, 1930, within the meaning of column 3 of the schedule referred to in the regulations 6 and 7.

Issue 5 :—The petitioner in the present case in addition to the calling in question the election of Mr. Amba Prasad, has claimed the declaration that Babu Ram has been duly elected. At the time of the settlement of issues his counsel, B. Mathura Prasad, stated that, so far as the relief for the declaration of Babu Ram as member was concerned, he would not press it. The Respondent no. 1 contends that the petitioner at this stage cannot withdraw his claim that Babu Ram be declared to have been elected. He relies on Rogers' Elections, Parliamentary, volume 2, at page 182, to support the above objection which runs as follows :—

"But the withdrawal of that portion which claims the seat cannot be affected by way of amendment, because the rights of the constituency would be affected by their not having the opportunity of substituting another petitioner as regards the claim to the seat."

The above observation is based on the English case of Aldridge *v.* Hurst (1876) (1 C. P. D., 410), and shows that the relief claiming the seat cannot be allowed to be withdrawn by way of amendment, but there is nothing in it to suggest that it cannot be abandoned. In the above case the court refused to allow the petitioner to amend his petition by striking out the prayer for the seat, one of the reasons for so refusing being that otherwise the right of giving recriminatory evidence would be lost to the Respondent. The court, however, pointed out that the petitioner might give notice to the respondent of his intention not to claim the seat so as to enable the latter

to avoid the costs of meeting such a claim without, on the other hand, preventing the possibility of recriminatory evidence being given. Recriminatory charges are permitted in the interests of electors in order to prevent a successful petitioner obtaining the vacated seat for himself or for any other person if he has violated any provisions of election law. The real question involved in the above case was whether the Respondent could give recriminatory evidence or not, in spite of the petitioner abandoning the claim for the seat or not. What was decided in that case is that if the petitioner was allowed to amend his petition by striking out the prayer for the seat, then the case would not be a recriminatory case but an ordinary case to set aside the election of the returned candidate, and the Respondent would not then be entitled to give recriminatory evidence, but if the petitioner abandons the claim for the seat, the relief for the claim of the seat remains there and the Respondent then would give recriminatory evidence. There is thus a difference between "amendment" and "abandonment". In amendment recriminatory evidence cannot be given. But in abandonment recriminatory evidence according to the case of Aldridge *v.* Hurst can be given. In the present case the petitioner wants to abandon his claim for the seat and does not pray for an amendment and no recriminatory petition has been filed or charge made and no question of recriminatory evidence arises, and consequently the observation in Rogers on Election Petitions does not apply to the facts of the present case. The case of Aldridge *v.* Hurst was quoted in the Bombay case of Muhammad Ali Allah Bux *v.* Jaffarbhoi Abdulbhoilalji (Jagat Narain's Indian Election Petitions, volume 2, page 48 at 51) to support the proposition that the claim for seat is a separate relief and can be abondoned at the hearing. In Joiletts (Dom) (1888) 15 S. C. R., 458, recriminatory charges were brought against the defeated candidate for whom the seat was claimed and the Judge having found that the election of the sitting member should be set aside fixed a date for the evidence upon the recriminatory charges. Thereupon the petitioners withdrew the claim for the seat and the Judge gave judgment avoiding the election. It was held that the petitioner could withdraw the claim and the Judge was right in refusing to proceed upon the recriminatory charges. Halsbury, volume 12, page 453 paragraph 882, also shows that a recriminatory case can be abandoned. The Indian Election case of Bombay, Muhammad Ali Allah Bux *v.* Jaffarbhoi Abdubhoi lalji (Jagat Narain's Indian Election Petitions, volume 2, page 48 at page 51) also lays down a rule to the same effect.

Rule 34 shows that it is discretionery with the petitioner to claim a seat for himself or for any other person and not compulsory. The relief to claim a seat is thus a distinct and separate relief from the relief to set aside the election of returned candidate, and there seems no reason why the petitioner cannot abandon the relief which is discretionery. We are of opinion that the petitioner can abandon his relief making a claim for the seat.

Issue no. 6.—Assuming for the sake of argument that the petitioner can not at this stage withdraw his claim then the question arises what is its effect on the proceedings. The Respondent contends that the other nominated candidates have not been made Respondents so the entire petition should be dismissed on the ground that it is one and its prayers are inseparable and reliance has been placed on the Saharanpore case (L. Chamman Lal *vs.* L. Shadi Lal Jagat Narain's Indian Election Petitions, vol. 1, page 56). The petitioner on the other hand urges that as the other nominated candidates withdrew their candidatures so it was not necessary to make them Respondent to the petition, and even if it was necessary the two reliefs are distinct and separable and so far as the relief calling in question the election of the Respondent no. 1 is concerned can be proceeded with. The Saharanpore case relied upon by the Respondent shows that the Commissioners were dismissing the petition on the ground that the petitioner had failed to show that anything took place at the election which would render it *void* and by way of *obiter dictum* remarked that the petition was further defective in that he had not joined as Respondent the other candidates and dismissed the petition. They have not given any reason in their report for the opinion that the ommision to join the other candidates as Respondents is fatal to the entire petition. The Bombay case of Muhammad Ali Allah Bux *v.* Jaffarbhoi Abdulbhoilalji (Jagat Narain's Indian Election petition vol. 2, page 48 at 51) on the other hand clearly shows that the two reliefs, one impunging the election of the returned candidate and the other claiming the seat are two distinct and separable reliefs and one may be allowed and the other may be disallowed. Rule 34 confors a separate and distinct right on a petitioner which he may or may not avail himself of. It enables him, if he so desires, in addition to the calling in question the election of the returned candidate to claim a declaration that he himself or any other candidate has been duly elected. This is a right which is in terms expressed in addition to the right of challenging and we have no difficulty in holding that a claim of this nature is separable from

a claim calling an election in question. This view receives further support from the decision in the Dacca Case Moulvi Raihainuddin *v.* Maoulvi Abdullatif Biswas (Jagat Narain's Indian Election petitions vol. 3, page 175) in which the election of the Respondent no. 1 was declared *void* but his claim for the seat was dismissed on the ground that he had not made the other candidate who was nomoinated at the election a party to the petition. We agree with the opinions of the Commissioners in the Bombay and Dacca cases, and are of opinion that the two reliefs of impunging the seat and of claiming the seat are distinct and separate reliefs and one may be allowed and the other disallowed.

It was contended on behalf of the petitioner that as the other candidates had withdrawn their condidatures so it was not necessary to add them as Respondents to the petition but we do not think that the above contention has any force. Rule 34 provides that the petitioner may if he desires, in addition to calling in question the election of the returned candidate claim a declaration that he himself or any other candidate has been duly elected, in which case he shall join as Respondents to his petition all other candidates who were nominated at the election. It was said that the words "Candidates who were nominated at the election" in the above rule mean the candidates who remained nominated upto the date of election and not those who had withdrawn. Rule 32 defines "candidate" to mean a person who has been nominated as a candidate at any election or who claims that he has been so nominated or that his name has been improperly refused and so forth. A candidate who has subsequently withdrawn is clearly a candidate within the meaning of the above definition. We are therefore of opinion that it was necessary for petitioner when he desired to claim a declaration for the seat for Babu Ram to join the other candidates who had withdrawn also as Respondents to the petition, and as he had not done so, the result is that his claim for the seat for Babu Ram cannot stand. We therefore hold that the entire petition cannot be dismissed for the petitioner's failure to implead the other candidates as Respondents but his relief as to the claiming the seat cannot be granted.

Issue no. 7.—It has been urged that as Babu Ram has not filed his return of election expenses, so he should be disqualified as laid down in rule 22 (4) of the United Provinces Election Rules. The statement of Babu Ram shows that he soon after the election was sent to jail under some Ordinance and has not filed his return of election expenses. The question therefore arises as to whether he was bound to file a return of

his election expenses. Rule 19 (1) provides that within 35 days from the date of the publication of the result of an election under sub-rule (9) of rule 14, there shall be lodged with the Returning Officer in respect of each person who has been nominated as a candidate for the election, a return of election expenses of such person containing the particulars specified in schedule 4 and signed both by the candidate and his election agent. Rule 22 (4) provides that if in respect of an election to any legislative body constituted under this Act, a return of election expenses of any person who has been nominated as a candidate at the election is not lodged within time and in the manner prescribed by or under the rules made in that behalf, neither the candidate nor his election agent shall be eligible for nomination for 5 years from the date of the election. The above rules show that the persons who are required to file a return of election expenses are persons who have been nominated as candidates at the election. We do not think that the words "any person who has been nominated as a candidate at the election" include persons whose nomination have been rejected by the Returning Officer. The word "Candidate" has been defined to mean :—(1) A person who has been nominated as a candidate at any election : (2) or who claims that he has been so nominated : (3) or that his nomination has been improperly refused : and (4) includes a person who when election is in contemplation, holds himself out as a prospective candidate at such election, provided that he is subsequently nominated as a candidate at such election. The above definition of "candidate" clearly shows that a person who has been nominated as a candidate at any election does not come within the meaning of a person whose nomination has been improperly refused. A person who has been nominated as a candidate at any election according to the above definition comes within a different category from a person whose nomination has been improperly refused. We are therefore of opinion that the candidates who are required to file a return of election expenses are those candidates who have been nominated as candidates at the election, and not the candidates whose nominations have been improperly refused and it was therefore not essential for Babu Ram to file his return of election expenses. We therefore hold that Babu Ram did not file a return of election expenses within the specified period and his failure to do so does not in any way affect the proceedings.

Issue no. 8 :—It is now well settled that when the nomination paper of a candidate has been improperly rejected, the ordinary presumption is that the result of the election has been

materially affected. Improper acceptance or refusal of a nomination paper by the Returning Officer in our view is so grave an irregularity that this presumption would require the strongest and most conclusive proof for its rebuttal and it lies heavily on the Respondent to rebut the presumption so raised. We do not think that the correctness of the above proposition is open to doubt, but in support of the general principle we may refer to the following English and Indian cases ;—the English cases are (Slington case 1901, O. M. and H. 120 : North Durham case 1874; 2 O. M. and H., 152 : North Meath case 1892, 4 O. M. and H. 185 : Davies *vs.* Kensington 1874, L. R. 9, C. E. 720). The Indian cases are (Rohtak case, Gobanshandas *vs.* Lalchand, Jagat Narain's Reports of Indian Election Petitions vol. 1 page 57 at 61) : Calcutta South S. N. Haidder *vs.* S. N. Mallik (Jagat Narain's Reports of Indian Election Petitions vol. 2, page 60 at 62) : and Golaghat case Taraprasada *vs.* Devi Charan Barua (Jagat Narain's Reports of the Indian Election Petitions vol. 2, at page 83 at 84).

In the present case it is, however, manifest that the improper acceptance of the nomination paper of Mr. Amba Prasad and the rejection of the nomination paper of Babu Ram has materially affected the result of the election. We therefore hold that result of the election has been materially affected by the wrongful acceptance of the nomination papers of Mr. Amba Prasad and non-acceptance of the nomination paper of Babu Ram.

The result is that the election of Mr. Amba Prasad is void. Respondent to pay Rs. 150. as costs to the petitioner.

J. J. W. ALLSOP
RAJA RAM
SHAMSUL HASAN

UNITED PROVINCES LEGISLATIVE COUNCIL
AZAMGARH DISTRICT N.- M. R.

THAKUR SHIVA SHANKAR SINGH...*Petitioner*

versus

THAKUR GIRAJ SINGH...*Respondent*

There is no provision in the regulations requiring that the description of the candidate or of the proposer given in the nomination paper should literally agree with the description given

in the electoral roll. The provisions of the regulations are sufficiently complied with if the nomination papers contain sufficient particulars to identify the persons concerned.

Where therefore the word "Babu" was prefixed to the name of the proposer instead of the word "Thakur" written in the electoral roll, and the address of the proposer was entered in the nomination paper as "V. and P.O. Rampur, district Ghazipore" while that given in the electoral roll was "Ranpur Pargana Khanpur District Ghazipur", it was held that these were only trivial discrepancies which did not affect the validity of the nomination paper.

The production of a certified copy of an electoral roll of any constituency is conclusive evidence of the right of any elector named in that entry to stand for election. But the regulation concerned does not provide that the certified copy shall be the only evidence admissible in proof of the matter. A letter from the District Magistrate of the district in which the petitioner was enrolled as an elector setting forth all the particulars appearing in the electoral roll necessary to identify the petitioner was held to be admissible to prove the above facts.

The petitioner is registered as an elector in Ghazipur district. He filed a letter from the District Magistrate of Ghazipur to the Returning Officer Azamgarh, along with his nomination papers to establish his identity. He was nominated by means of two nomination papers. Both these nomination papers were rejected by the Returning Officer on the grounds that the father's name and the address of the petitioner given in the nomination papers did not correspond with those mentioned in the aforsaid letter or the certificate as he calls it, and that there was no constituency of the description given in the nomination papers, in the schedule appended to the regulations. The disagreement of the name of the proposer, as signed by him, with that given in the electoral roll was an additional ground rejecting the first nomination paper. As the nomination papers of the petitioner were rejected and the Respondent no. 2 withdrew his candidature within the prescribed time, the Respondent no. 1 was returned unopposed. The present petition has been filed to have the election of the Respondent no. 1 declared *void* on the ground that nomination papers of the petitioner were improperly rejected by the Returning Officer and that the rejection materially affected the result of the election.

The Respondent no. 1 opposes the application. The pleadings of the parties have given rise to the following issues:—

1. Are the candidates Shiva Shanker Singh and his proposer not identical with the persons whose electoral numbers are given in the nomination papers as the numbers of such candidate and proposer ?

2. Is the constituency wrongly described and does that render the nomination papers invalid?

3. In order to prove the identity was it necessary for the petitioner to produce a certified copy of any entry made in the electoral roll of the constituency, and if so, how does the non-production of a certified copy affect the validity of the nomination papers ?

Issue no. 1 :—The father's name of the petitioner given in the nomination paper was "Thakur Dwarka Prasad Singh", while in the aforesaid letter it was mentioned as "Babu Dwarka Prasad Singh". The address of the petitioner as entered in the nomination paper was "V. and P. O. Rampur district Ghazipur", and that given in the letter was "Rampur Pargana Khanpur District Ghazipur". The difference between the two descriptions was that the petitioner's father's name in the nomination paper was prefixed by "The" (an abbreviation of Thakur) instead of "B" (an abbreviation of Babu) and it contained Pd. (a Contraction of Prasad) and in the latter the pargana was not given but the letter "V. and P. O." standing for village and post office were prefixed to Rampur, the name of the village. The discrepancy in the description of the proposer was that he signed his name as "Rai Rash Behari Lal" in the nomination paper while the name appearing in the electoral roll against the electoral number given in the nomination paper was "Rai Rash Behari." In the absence of any evidence in this case to show that there was any other persons besides the petitioner and the prosposer answering to the description of the petitioner as given in the said letter and that of the proposer as given in the electoral roll against the numbers given in the nomination paper, it does not seem reasonable to hold that the petitioner and the proposer were not identical with the persons referred to in the said letter and the electoral roll for the mere reason that there was no absolute literal correspondence between the descriptions as given in the nomination papers and the said letter and the electoral roll. The inaccuracies in the description in this case were merely technical and of no importance. They were not of a nature which could have mislead any one.

The grounds on which a nomination paper can be refused are set out in Regulation 9 of the Regulation for the election of members to the Legislative Council of the United Provinces. The Returning Officer is, under sub-clause (1) (4) of the Regulation, the only clause applicable in this case, authorized to reject a nomination paper only in case he has doubts as to the identity of the persons concerned and even then as provided by sub-clause (1) after such summary enquiry as the Returning Officer thinks necessary. There is no provision in the regulation requiring that the description of the candidate or of the proposer given in the nomination papers should literally agree with the description given in the electoral roll. The provisions of the regulation are complied with if the nomination papers contain sufficient particulars to identify the person concerned. The discrepancy in the description in this case as stated above was not such as could have raised any doubts as to the identity of the persons concerned. Issue decided against the petitioner.

Isssue no. 2:—The 7th entry in the nomination paper under the heading "constituency" on the electoral roll of which the candidate is registered is "Polling station Khanpur, district Ghazipur" and Non-Muhammadan Rural. "The correct name of this constituency was "Ghazipur District Non-Muhammadan Rural". The addition of the words "Polling Station Khanpur" and putting the words "district" before, instead of after the word "Ghazipur" in the name of the constituency cannot also be said to be misleading. There could be no room for doubt as to the constituency to which the petitioner intended to refer in this case. For the reasons given above, which equally apply in this case, the misdescription was also of no importance and did not affect the validity of the nomination. We accordingly find that there was a mistake in the description of the constituency in this case but it did not render the nomination invalid.

Issue no. 3:—Regulation 9 (2) (a) provides that the production of any certified copy of an entry made in the electoral roll of any constituency shall be conclusive evidence of the right of any elector named in the entry to stand for election. But it does not prove that the certified copy shall be the only evidence admissible in proof of the matter. The petitioner, has, in this case, instead of producing a certified copy of the electoral roll, produced a letter from the District Magistrate of Ghazipur to the Returning Officer of Azamgarh, showing his name, parentage, address, the name of the constituency on the electoral roll of which he was registered as an elector and his electoral number.

This letter thus contains all the particulars appearing in the electoral roll necessary to establish the identity of the petitioner and it was as reliable as a certified copy of the electoral roll. We decide this issue also in favour of the petitioner.

We hold that the nomination paper of the petitioner was improperly rejected and that the improper rejection of the petitioner's nomination paper has materially affected the result of the election and are of opinion that the Respondent no. 1 has not been duly elected. We recommend that the election of Respondent no. 1 be declared void.

Parties to bear their own costs.

J. J. W. ALLSOP
RAJA RAM
SHAMSHAUL HASAN

THE CENTRAL PROVINCES LEGISLATIVE COUNCIL

BHANDARA DISTRICT NON-MUHAMMADAN RURAL

R. B. V. M. JAKATDAR...*Petitioner*

versus

1. V. D. KOTLE
2. G. R. BAPAT
3. BABULAL TIKRAMSAO
4. RAMNATH BHADUPOTA...*Respondents*

The addition of the words "non-Muhammadan Rural" to the name of the constituency, was held to be a mistake in the use of form of nomination paper, which only required the giving of the name of the constituency, but it was held to be venial one, which did not invalidate the nomination paper.

It is desirable that the name in the nomination paper should be the same as appears in the electoral roll. But there is no rule which requires that the name entered in the nomination paper should be the full name of the candidate.

The object of requiring the name of sub-division within which the names of electors are entered, in the nomination paper is that the identity and eligibility of the candidate, the proposer and the seconder be ascertained in case of an objection. The object of use of the prescribed nomination paper is to secure the identity and eligibility of a candidate with a view to notify to the electorate the person in respect of whom they are entitled to exercise their right of franchise. When there is no doubt on account of the omission of the name of the sub-division, the nomination paper cannot be vitiated by the omission. (I. E. P. vol. 2, page 146 dissented from).

In some cases the word "must" and "shall" may be substituted for the word "may", but that can be done only for the purpose of giving effect to the intention of the legislature.

A statutory provision is regarded as directory if the directions given to accomplish a particular end may be violated and yet the given end be in fact accomplished and the merits of the case unaffected.

The absence of father's name of the seconder in the electoral roll does not vitiate a nomination by such seconder.

The validity of the nomination paper of a candidate is a matter which concerns not merely the petitioner, but also other candidates as well as any other members of the electorate interested in exercising or abstaining from exercising his right of franchise. The right of objectiou to a nomination paper cannot be waived. The action of a candidate in respect of the discharge of a public duty by a public functionary cannot create any extoppel against the candidate.

The discretion of the Returning Officer in accepting or rejecting a nomination paper is open to revision by an election tribunal hearing a petition.

An election cannot be said to be materially affected unless the irregularities which have occurred have actually turned the scale in favour of the returned candidate. It must be shown that but for the alleged irregularities the returned candidate would not have secured the majority of votes. It is not enough to

show that the result of the election might have been affected. It must be shown that it was actually affected by non-compliance with rules and regulations.

At the general election held in 1930, there were five candidates for the one seat allotted to the Bhandra District Non-Muhammadan (Rural) constituency, who are now the parties to this petition. Respondents no. 2 to 4 had withdrawn their candidature. The petitioner got 37 votes and the Respondent no. 1 251 votes. There was no objection whatever about the nomination of any of the candidates before the Returning Officer.

Respondent no. 1 is the only contesting party.

On the pleadings of the parties the following issues were framed :—

(1) Is the election of the Respondent no. 1 void for reasons given in para 2 of the petition ?

(2)(*a*) Did the petitioner inform the Returning Officer that he had no objection to the nomination paper of the Respondent no. 1 ?

(*b*) Did he also waive his right of objection to the same ?

(*c*) Does the absence of any objection on his behalf estop him from challenging the validity of the nomination paper of Respondent no. 1 in court ? How does the waiver, if any, affect him in this respect ?

(*d*) Could the Returning Officer himself raise the objections raised in the election petition and reject the same ? Does the acceptance of the nomination paper of the respondent by him prevent us from going into the question of its validity ?

(*e*) Was the nomination paper of the Respondent no. 1 improperly accepted by the Returning Officer? If so, whether the said acceptance materially affected the result of the election in this case ?

(3)(*a*) Was there any compact between the petitioner and the respondents 2 to 4 as alleged in the oral statement made by the Respondent no. 1 this day ?

(*b*) Was there also any compact as alleged in para 13 of the written statement ?

(*c*) How either of these compacts would have affected the withdrawal of their nomination papers by the Respondent no. 2 to 4 ?

4. Can the question of compact be not gone into owing to the non-compliance of the provisions of rule no. 42 of the electoral rules by Respondent no. 1 ?

5. Can the petitioner be declared elected in case the nomination paper of the Respondent no. 1 is held to be invalid?

Findings

Issue no. 1:—The contention of the petitioner is that the nomination paper of the Respondent no. 1 is invalid owing to his having put down therein the name of the constituency as Bhandara district (Non-Muhammadan rural) instead of mere "Bhandara District". The name of the constituency is undoubtedly "Bhandara District", while the class of constituency in the second column is non-Muhammadan rural. We find that the addition of the class of constituency in parenthesis after the name is a mere surplusage which has not misled any one about the identity or the extent of the constituency. In our opinion it does not vitiate the nomination paper.

The second contention urged is that the mention of the Respondent no. 1's name as "Vinaka" instead of "Vinayak Damodar Kolte" is fatal to the validity of his nomination. We note that in the space immediately below, intended for candidate's father's name, the entry is Damodar. It is desirable that the name in the nomination paper should appear to be the same as that in the electoral roll. But there is no rule enjoining that the name entered in the nomination paper should be the name in full. We need not draw any analogy from Christian names as the identity of the candidate was beyond doubt in as much as in the next line immediately below "Damodar" followed "Vinayak" and as the Respondent no. 1 signed "V. D. Kolte "in the appropriate space for it. In our opinion there is no force in this contention as a rigid adherence to the electoral roll is not absolutely necessary, *vide* Thakur Mahendra Nath vs. Babu Devaki Prasad (Jagat Narain's I. E. P. vol. 3, page 228).

The petitioner's third ground of attack refers to the omission altogether of the description of the sub-division of the electoral roll in the space intended for it along with the electoral roll no. 76 in the nomination paper in accordance with the instructions contained in the footnote thereof. The name of the Respondent no. 1 is registered as a voter in the Nagpore division (urban) constituency which had been divided into 9 sub-divisions according to the name of the municipalities, viz. Umrer, Wardha, Hinganghat, Arvi, Chanda, Warora, Bhandara, Gondia, and Lalaghat. There has also been a further sub-division according to the sex of the voters into "Male electors" and "female electors". The petitioner's contention is that the nomination paper of Respondent no. 1 is invalid because it did not mention "No.

76 the municipality of Bhandara (male elector)" in the space intended for it. We concede that the omission of the description is a serious irregularity having regard to the instructions contained in the footnote in the form of the nomination paper.

We are aware of the report of the commissioners in the Raipur case, Badri Prasad *vs.* Sheodas Daga (Jagat Narain's I. E. P. vol. 2, page 146). In that report the objection to the omission of the sub-division was raised before the Returning Officer, who after holding an inquiry he thought fit, under regulation 4 (1) framed under rule 15 of the Central Provinces Electoral rules, rejected the nomination paper. We do not know fully the facts or grounds of his rejection. From the fact that it was rejected we may well assume that there were at least some disputable grounds for suspecting the identity or eligibility of the candidate. There were three districts each of which formed a sub-division with separate serial numbers. It appears from the report that the commissioners took into consideration certain surmises and probabilities arising out of the facts of the case. Every case has to be decided on its own facts and the circumstances attending it. The present case is easily distinguishable by three outstanding facts which relieve us from the necessity of travelling into the domain of surmises and probabilities for our conclusion, viz., (1) the nomination paper was accepted by Returning Officer without any objection from any one and the Returning Officer had the fullest confidence about the identity and eligibility of the candidate; (2) the electorate had declared its choice by overwhelming majority in an open contest and (3) the contest has been properly conducted unaffected by any corrupt motive or practice, and resulted in the success of the Respondent no. 1. We cannot ignore that there is a distinction between the case of an improper rejection of a nomination paper by the Returning Officer and that of its improper acceptance. In former case, the electorate is deprived of its right to vote for a candidate who was legally entitled to stand; in the latter case every one in the constituency gets an opportunity of voting for the candidate he prefers.

The details to be filled in the nomination paper are intended to ensure either the identity or the eligibility of the candidate, the proposer and the seconder. Mention of the sub-division of the electoral roll does not throw any light on the eligibility of the candidate or his proposer and seconder. No doubt of any kind whatever is likely to arise by reason of the omissions of the sub-division, as the other particulars are sufficient for the purpose of identification. The omission of the sub-division

therefore, does not go to the root of the validity of the nomination paper.

The object of requiring the name of the sub-division within which the electors are entered is that the identity and eligibility of the candidate, the proposer, and the seconder should be discovered in case of an objection (Babu Khagendra Nath Gangauli *vs.* Charu Chandra Sinha (Jagat Narain's I E. P. vol. 3, page 207).

Much reliance has been placed by the petitioner upon the use of the word" must" in the footnote in the form of the nomination paper. For our present purpose, as the point has been conceded we consider the instructions contained in the footnote to be an operative part of the rules and not to be slighted. As Justice Mookerji observed in Shaymchand Basak *vs.* Chairman Dacca Municipality (I. L. R. 47 Cal., 526), all rules are made for their observance, but in cases of their breach the object of the rules has to be found out, and if the object has been attained in spite of the breach, the transgression will have to be condoned and the works of the statute will be even stressed to secure the substance aimed at by the statute. The use of the word "must" in the footnote would not, therefore, make the rule obligatory in each and every case. Sir Barnes Peacock while delivering judgment of the Privy Council in Delhi and London Bank *vs.* Orchard I. L. R. 3, Cal., 47) observed as follows:—

"There is no doubt that in some cases the word" must" or the word "shall" may be substituted for the word "may", but that can be done only for the purpose of giving effect to the intention of the Legislature."

The object or the intention of the Legislature directing the use of the present nomination paper is to secure the identity and eligibility of a candidate with a view to notify to the electorate the person for whom they are entitled to exercise their right of franchise. We have examined the Returning Officer and find that he had not the slightest doubt about the identity or the eligibiilty of Respondent no. 1 or his proposer or seconder. There is not an iota of evidence to show that any member of the electorate had any such doubt. There is no evidence to show that a single vote was affected by the omission to mention the sub-division in the nomination paper. As the object of the nomination paper has been attained, we think that the omission to state the sub-division in accordance with the footnote, though a breach of the rules, did not make the nomina-

tion paper a nullity, placing it beyond the jurisdiction fo eth Returning Officer to accept the same.

We do not expect a piece of legislation of an obligatory nature of far reaching affect relegated to the marginal footnote. And the majority of the electorate has by an overwhelming number signified its choice in a regularly conducted poll without any corrupt motive or practice, to postulate that the election was materially affected by the mere nonmention of sub-division would lead to a *reducdio ad absurdum.*

The correct rule of interpretation in such cases has been stated by Lord Chancellor Lord Campbell in the following words:—

"No universal rule can be laid down for construction of statutes as to whether mandatory enactments shall be considered directory only or obligatory with an implied nullification for disobedience. It is the duty of courts of justice to get the real intention of the Legislature by carefully attending to the whole scope of the statute to be construed."(Vide A.I.R. Oudh, 1930, at page 439).

Maxwell (7th Edition, page 321) sums up the rule in the light of the latest decisions in the following relevant passage:-

"On the other hand, when the prescription of a statute relates to the performance of a public duty and where the invalidation of acts done in neglect of them would work serious inconvenience or injustice to persons who have no control over those entrusted with the duty without promoting the essential aims of the Legislature such prescriptions seem to be generally understood as mere instructions for the guidance and government of those on whom the duty is imposed or in other words as directory only. The neglect of them may be penal but does not affect the validity of the act done in disregard of them."

A statutory provision is regarded as directory if the directions given to accomplish a particular end may be violated and yet the given end be in fact accomplished and the merits of the case unaffected. Justice Mookerjee in I.L.R., 47 Cal. case referred to above lays down as follows:—

"An election ought not to be held invalid by reason of the transgression of the law.....when the court is satisfied that the result of the election, i.e., the success of one candidate over the other, could not have been affected by those transgressions."

We may point out the case of Rai Prasanna Kumar Das *vs.* Mr. Chittranjan Das (Jagat Narain's I.E.P., vol. 2, page 113) wherein besides some other irregularities the number of the

electoral roll of the candidate was omitted. It was not considered as a vital defect so as to make the nomination paper invalid. In our opinion the omission to mention the sub-division is comparatively of a trifling nature, and does not nullify the nomination paper.

The fourth contention of the petitioner relates to the omission from the nomination paper of mention of sub-division "Non-Muhammadan Rural Male" against no. 550 and 200 of the proposer and seconder in space intended for that purpose therein. In omitting to mention these sub-divisions undoubtedly a breach has been made of the rule embodied in the footnote read with rule 11(3). The Returning Officer, however, satisfied himself of the identity and qualifications of the proposer and seconder. We are of opinion that the omission to mention "male elector" as a sub-division against the number of the proposer and seconder did not invalidate the nomination paper, although it involved a breach of the footnote, *vide* Babu Khagendra Nath Gangauli *vs.* Babu Charu Chandra Sinha (Jagat Narain's I. E. P., vol. 3 page 207, at page 212).

The fifth contention of the petitioner is to the effect that the electoral roll of the Bhandara District Non-Muhammadan Rural Male sub-division does not show the father's name of the seconder Raghuber Prasad Brahman and accordingly the nomination paper seconded by such an elector should be considered as invalid.

Under regulation Nos. 2 (1) and 2 (2) framed under rule 9 (2) of the Central Provinces Electoral rules it is incumbent on the Deputy Commissioner to show in the electoral roll the father's name of an elector. The father's name of the seconder Raghuber Prasad Brahman is known to be Sheocharan Lal Pande, but the defect in the electoral roll was not corrected under rule 9 (6) of the regulations framed thereunder. Under regulation no. 8 (3) of the regulations framed under rule 9 (1) of the Central Provinces Electoral rules the order of the revising authority becomes final on the points involving entries or absence of entries in the electoral roll. The elaborate and cumbrous machinery of election commissioners was not intended to determine, in the absence of any allegations or proof of any corrupt motive on the part of persons responsible for the preparation of the electoral roll, simple questions of fact such as the omission of the father's name of an elector. It has not been proved that Raghuber Prasad was not a qualified voter, or that he did not bear the number under which he is registerted in the electoral roll. We are therefore of opinion that the entry of his name in

the electoral roll, though without his father's name, in ontravention of regulntion no. 2 (2) of the regulations framed under rule 9 (2) of the Central Provinces Electoral rules, is presumbly correct. His description in the elecforal roll is sufficiently for his identity. The entry of his name in the electoral roll is sufficient as regards his qualification as a voter. Any person whose name is registered in the electoral roll, and who is not subject to any disability stated in rule 7, may subscribe a nomination paper. We are, therefore unable to hold that the nomination paper of the Respondent no. 1 should be be considered as a nullity because the seconder's father's name did not appear on the electoral roll.

Issue no. 2 (a):—We consider the testimony of the Returning Officer to be conclusive that the petitioner did not inform him that he had no objection to raise to the nomination paper of the Respondent no. 1.

Issue no. 2 (b):—The validity of the nomination paper of the Respondent no. 1 was a matter which concerned not merely the petitioner but also other candidates as well as every other member of the electorate interested in exercising or abstaining from exercising his right of franchise. One can waive only his individual right but not renounce the right which he shares with others. We therefore hold that the petitioner did not, and could not waive the right to object to the validity of Respondent no. 1's nomination paper.

Issue no. 2 (c):—We fail to see how a change could be brought about by the absence of objection on the part of the petitioner at the time of scrutiny, and operate as estoppel. The acceptance or rejection of a nomination paper is a duty of the Returning Officer as a public functionery. It is well settled that the action or inaction of a candidate in respect of the discharge of a public duty by a public functionery cannot create any estoppel against the candidate, *vide* Abdul Qadir *vs.* Syed Natique (Jagat Narain's I. E. P., vol. 3, page 127 at page 131).

Issue no. 2(d):—The Respondent no. 1's learned advocate contends on the analogy of section 115 of the Code of Civil Procedure that the Election Commissioners cannot question the validity of a nomination paper accepted by the Returning Officer. The argument is based on regulation no. 4(1) in which nothing is said about the acceptance of a nomination paper. The argument further runs that the tribunal is competent to inquire into matters pertaining to only refusal of a nomination paper by the Returning Officer. We note, however, that under regulation no. 5(1) the acceptance of the nomination paper is specially provided

for. We have held that the acceptance of the nomination paper of the Respondent no. 1 by the Returning Officer was not improper. It is therefore sufficient to say here, that our powers are wide enough to justify interference when it is found that the discretion vested in the Returning Officer has been improperly exercised, vide:—Babu Ramugra Narain Singh *vs.* Babu Sarda Prasad Singh (Jagat Narain's I.E.P., vol. 3, page 232).

Issue no. 2(c):—We consider that the action of the Returning Officer in accepting the nomination paper was not in any way irregular or improper. We might, all the same, add that there was a free contest between the petitioner and the respondent no 1 with the result that the latter polled 251 votes as against 37. No corrupt or improper pratices are alleged in the case. It is idle to invite us to draw our imagination and speculate as to what would have happened if the Returning officer han refused the nomination or if the other candidates had not withdrawn. The law in India and in England is different in respect of the effect of non-compliance with the electoral rules. In India, even though the petitioner succeeds in proving that there was noncompliance with the provisions of law it is further required to be proved that such non-compliance materially affected the result of the election. The election can not be said to be materially affected unless the irregularities which have occurred actually turn the scale in favour of the returned candidate. It must be shown that but for the irregularities the returned candidate would not have secured a majority of votes. It is not enough to show that the result of the election might have been affected; it must be shown that the result of the election was actually affected by non-compliance with the rules and regulations vide:—Babu Dasu Sinha *vs.* Babu Rajdhari Sinha (Jagat Narain's I. E. P., vol. 3, page 80).

We therefore hold that the result of the election was not affected by the flaws in the nomination paper of Respondent no. 1.

Issue no. 1 (a) (b) and (c):—There is not an iota of evidence to support these contentions.

Issue no. 4:—Issue no. 3 having been decided against the petitioner, it is unnecessary to decide this issue.

Issue no. 5:—The decision of this issue is unnecessary since the nomination paper of Respondent has not been found to be invalid. Assuming that it was so, it would still not be possible to declare the petitioner, as duly elected. 288 voters made their choice in favour of the Respondent no. 1, and it would be neither

fair nor permissible under the law to deprive such a large number of voters to make a fresh choice if the contingency urged by the petitioner had happened.

We beg to report that the petition be dismissed. Respondent no. 1 having raised several untenable pleas, parties should bear their own costs.

N. K. MOHGAONKAR
S. C. CHAKRABATTY
D. N. CHAUDHRI

THE CENTRAL PROVINCES LEGISLATIVE COUNCIL BETUL DISTRICT NON-MUHAMMADAN RURAL

MR. GOKUL PRASAD...(*Petitioner*)

versus

MR. K. M. DHARAMADHIKARI...*Respondent*

The form of nomination paper in Central Provinces Electoral rules does not require the names of father's of proposer and seconder, and the absence of father's name of proposer and seconder does not therefore vitiate a nomination paper. The question whether the person who actually appears before the Returning Officer and claims to be the proposer or the seconder is or not identical with the person whose description is given in the electoral roll against the number given by him in the nomination papers is altogether a different one, and ought not to be confounded with the question of what is necessary to be stated in the form. It is one thing to say that the form has not been properly filled in, and quite another that the proposer or the seconder is not identical with the person whose electoral number is stated in the form.

It is not open to a Respondent to justify the rejection of the petitioner's nomination paper on grounds other than those raised by him before the Returning Officer. Order 41 rule 22 referred to.

For the purpose of strict adherence to a particular form it is not necessary that actual words of the rule be copied word for word.

Signatures of a person do not become bad only because they are made in a different form than those in which he generally makes them.

Name cannot be construed as meaning the initial letters of the name only, and whenever the name is required to be stated, it is not enough to mention initial letters of the name, but full name must be mentioned.

The Returning Officer rejected the nomination papers of the respondent, and of two candidates (not parties to the case) on the ground that the names of fathers of the proposers and seconders of those candidates were not stated therein along with their own names. The petitioner contended that the mention of the name of the fathers of the proposers and the seconders was not necessary according to the rules, and that therefore the Returning Officer was not justified in rejecting the nomination papers. The petitioner further contended that the nomination paper of the Respondent was improperly accepted, and that the nomination papers of the Respondent were liable to be rejected on the ground that his full name was not mentioned therein. In addition to these two parts of the petitioner's case, the election of the Respondent was further sought to be avoided on two other grounds, namely, that certain persons other than those permitted by Regulation No. 3 under rule 15 of the electoral rules to be present at the time of the scrutiny were present, and that the list of valid nominations was affixed to the notice board of the Returning Officer on the day of the scrutiny instead of on the following day.

The following issues were framed :—

1. Was it obligatory to mention the names of the fathers of the proposers and the seconders of (the two other candidates) Lala Baijnath and Mr. Chandan Lal along with their own in the nomination papers of those candidates ?

2. If not, was the omission sufficient ground for rejecting their nomination papers ?

3. Whether it is open to the Respondent to justify the rejection on grounds other than those on which it proceeds ?

4. If so, whether the declarations filed under rule 11(5) of the electoral rules by Lala Baijnath and Mr. Chandan Lal were

not in order, and whether the Returning Officer was wrong in overriding this objection ?

5. Whether the signature of the aforesaid two candidates and their proposers and seconders on their nomination papers were not their usual signatures; if so, were the said nomination papers liable to be rejected on this ground ?

6. Were persons other than those permitted by Regulation No. 3 under rule 15 present at the time of the scrutiny: if so, is the decision of the Returning Officer vitiated by reason thereof ?

7. Whether the list of valid nominations was affixed to the notice board of the Returning Officer on the 16th October 1930: if so, are the proceedings of the Returning Officer vitiated by reason thereof ?

8. Whether the nomination papers of the Respondent were liable to be rejected on the ground that his full name was not mentioned therein.

The first issue is the most important one in the present case, and practically the entire case depends upon the decision thereon. The decision in our opinion, ought to turn on the interpretation of the form prescribed for the nomination paper in Schedule III of the Central Provinces Electoral Rules. It will appear therefrom that, while the form requires the name of a candidate's father to be mentioned, it does not require that of the father of the proposer or the seconder. If the intention of the rules were that the names of the father of the proposers and the seconder ought to be mentioned, such an intention would surely have been expressed in the form itself. The omission cannot possibly be regarded as accidental as the name of the candidate's father is expressly required by the form. We think, therefore, that it must be taken that the omission is intentional, and delibarately based on the view that the names of the fathers of the proposers and seconder were not necessary. The Returning Officer has proceeded upon the view that such names were necessary for the purpose of facilitating the identification of the proposers and seconders, and that the name of the proposer or the seconder should be held to include the name of his father. The latter view obviously is a corollary of the former; for, if the father's name is not necessary in the case of a proposer or seconder, it necessarily follows that the name of the proposer or seconder need not include the father's name. The whole question, therefore is a simple one, namely, whether the name of the father of the proposer or the seconder is necessary. As we have said before, the rules seem to us to contemplate that it is

not necessary. The opposite view taken by the Returning Officer seems to us to be almost entirely influenced by the assumption that in the absence of the father's name it would be difficult to identify the proposer or the seconder. We are inclined to think that there need be no such difficulty. The form expressly requires the number of the proposer or the seconder in the Electoral Roll to be stated in it. With the help of this number it is possible for the Returning Officer to find out with reference to the electoral Roll whether the details given in the latter against this number correspond to those of the person who figures as the proposer or the seconder in form. The question whether the person who actually appears before the Returning Officer and claims to be the prosposer or the seconder is or not identical with the person whose description is given in the Electoral Roll against the number given by him in the nomination papers is altogether a different one and ought not to be confounded with the question of what is necessary to be stated in the form. As will appear from Regulation No. 4 of the Regulations made under rule 15 of the Central Provinces Electoral Rules, the Returning Officer has the power of rejecting a nomination paper either because the form has not been filled in as required by the rules, or because any prosposer or seconder is not identical with the person whose electoral number is given in the nomination paper as the number of such proposer or seconder. These two grounds are stated separately in the said regulation which brings out clear distinction between the two. Obviously, it is one thing to say that form has not been duly filled in, and quite another that the proposer or the seconder is not identical with the person whose electoral number is stated in the form. It will be clear on even a cursory reading of the Returning Officer's order that the said officer has not given a distinct finding that any of the proposers or the seconders of the two candidates, whose nomination papers were rejected, was not identical with the person whose electoral number was given in the nomination papers as the number of such proposer or seconder. The said officer has indeed, stated that the identity of these persons was challenged before him, but if so, it was his clear duty to make such summary inquiry with regard to this challenge as he thought necessary, and to come to a definite conclusion on the question of the identity. As it is, he omitted to decide that question and proceeded to reject the papers on the other ground, namely that the form was not filled in as required by the rules. In the absence of a definite finding that any of the prosposer or the seconders was not identical as aforesaid, we cannot take the rejection of the nomination papers

as based on the ground No. (iv) mentioned in sub-regulation 1 of Regulation No. 4 aforesaid. From the proceedings of the Returning Officer it nowhere appears that the nomination papers of the aforesaid two candidates were objected to expressly on the ground that any of their proposers or seconders was not identical as aforesaid, nor is any such allegation clearly made before us. In the circumstances, we are not called upon to decide the question of identity. That question seems to us to have been only incidentally referred to by the Returning Officer for the purpose of emphasizing the necessity of mentioning the father's names. We are of opinion that even if the father's names are mentioned, such a mention is not sufficient for a decision of the question of identity. Therfore, it is fallacious to argue that for the purpose of identification, it is necessary to mention the father's names. Our finding on the first issue, therefore, is that it was not obligatory to mention the names of the fathers of the proposers and the seconders of Lala Baijnath and Mr. Chandan Lal along with their own in the nomination papers of those candidates.

The second issue was merely a corollary of the first. It follows from the finding on the latter the omission cannot be regarded as a sufficient ground for rejecting the nomination papers of those candidates. It is obviously not such an omission as is contemplated in ground No. (iii) of sub-regulation 1 of Regulation No. 4 referred to above.

Coming now to the third issue which is also question of law, we must observe that though reference was made at the Bar to some cases, we could find none bearing on this question. The rules also contain no express provision on the point, but it seems to us that from the provision of rule 37 of the Central Provinces Electoral Rules, a clue must be found for decision of the question. It is true that the rule permits the application of the procedure relating to the trial of suits only, but we are inclined to think that in cases in which the Commissioners are called upon to decide the question of an alleged improper rejection or acceptance of a nomination paper, the position of the Commissioners with regard to such a question is analogous to that of an appellate court, and that in such cases the word "suits" must be held to include "appeal". Holding this view we consider that the question must be decided with reference to the provisions of sub-rule 1 of rule 22 of Order 41 Schedule 1, to the Civil Procedure Code. Those provisions include one permitting a respondent to support the decree appealed from on any of the grounds decided against him in the Court below. On

that analogy, we think that it is open to the respondent to justify the rejection of the nomination papers of the aforesaid two candidates on those grounds only which were raised by him before the Returning Officer and were decided against him, and we record a finding to that effect.

The fourth issue deals with a ground which was in fact raised by the respondent before the Returning Officer and was decided against him. In consequence of our finding on the third issue, this question has got to be decided by us. The contention of the Respondent is that sub-rule (5) of rule 11 of the Electoral Rules requires the declaration to be made in a particular form, and that the provision being mandatory, that form must be strictly adhered to. So far, we are prepared to accept the contention. But the question really is whether the expression actually used in the declarations objected to, does or dose not amount to such strict adherence. For the purpose of such strict adherence, it is, in our opinion, not necessary that the actual words obtaining in the sub-rule should be copied down word for word. All that appears to be necessary is that there should be an express appointment. When a person declares that he shall act as his own agent for the purpose of the election, such a declaration must, in our opinion, be held to amount to an express appointment. There is undoubtedly a clear distinction between an appointment and acting, but what we are here dealing with, is not actual acting, but a declaration that he shall act. We see no substantial difference between an expression that he appoints himself as his agent and the expression that he declares that he shall act as his agent. The difference sought to be made out appears to us to be merely imaginary. We, therefore, hold that the declarations objected to were in order, and that the Returning Officer was right in over-ruling the objection.

The fifth issue deals with a ground which was not raised before the Returning Officer. In view of our finding on the third issue, we should hold that the contention covered by this issue should not be allowed to be raised before us, but for the sake of completeness, we might as well express our opinion on this contention. As we understand it, it means that the signatures of the condidates and their proposers and seconders on the nomination papers of the aforesaid two candidates were not made in the manner in which they usually make them. It follows that the contention does not amount to an allegation that any of these said signatures was not genuine, so as to constitute a ground such as that mentioned in item No. (v) in sub-regula-

tion 1 of Regulation No. 4 mentioned above. At best, the contention might amount to failure to comply with the rules in the filling up of the form referred to in item No. (iii) of the said sub-regulation. Such a failure might plausibly be argued only if the signatures in the manner actually made could not be properly described as signatures at all. We are, however, of opinion that the actual manner of the signatures in this particular case can by no means be regarded as so unusual as not to amount to signatures at all. We are disposed, therefore, to regard this contention of the respondent as unsubstantial. The finding that we would record on this point is that the signatures actually made cannot be regarded as not amounting to signatures, and, that, therefore, they cannot constitute a failure to comply with the rules relating to the filling up of the form.

The sixth and the seventh issues deal with the alleged breach of the provisions contained in Regulation No. 3 under Electoral Rule No. 15, and Regulation No. 6 under the same rule. We do not consider it necessary to determine the question whether these alleged breaches did in fact take place, for, we are clearly of opinion that, even if they did, could not in any way have affected the result of the scrutiny. It cannot possibly be held that they in any way affected the acceptance or refusal of any of the nomination papers. These points have further not been pressed before us. The only findings that we would record thereon therefore, are that the proceedings of the Returning Officer are not vitiated by reason of the said breaches.

Coming now to the last issue, which deals with the alleged improper acceptance of the nomination papers of the Respondent, the question that arose is whether the mention of the initial letters of the names of the candidate and his father with the addition of the surname is a sufficient compliance with the provisions of the rules relating to the filling up of the form. A reference to Schedule No. 3 of the Electoral Rules will show that in the case of a candidate what is required is his own name and the name of his father separately. Now, the word "Name" cannot, in our opinion, be construed as meaning the initial letters of the name only.

Wherever the name is required to be stated, it is the full name and not merely the initial letter. Similarly, in the case of the father's name, it is clearly not enough to mention the initial letter of that name. The argument of the Respondent that the mention of his name in the nomination papers tallies with that given in the Electoral Roll against his number, is, in our opinion, beside the point. That it so tallies is no

reason for holding that the name is stated as required by the form. We do not mean to question the correctness of the entry in the Electoral Roll but we are not prepared to agree that all the form required is a clear identity between the entry in the Roll and that in the form, nor are we prepared to agree that the manner in which the name is mentioned in the form being sufficient for, the purpose of identification, nothing further was required. We are distinctly of opinion that even if it was so sufficient, that is no justification for omitting to state the full name as required by the form. We must observe that at the hearing, the learned counsel for the petitioner did not press his contention on this point, but that was because he thought that it would go against the spirit of his argument on the first part of the case, which was that the rules required nothing more than a substantial compliance therewith. In spite of this view of the learned counsel we are of opinion that the way in which the name of the Respondent was mentioned in the form is not such substantial compliance. Accordingly we hold that the nomination papers of the respondent were liable to be rejected on the ground that his full name was not mentioned therein.

It follows that the improper rejection of the nomination papers of the two candidates other than the Respondent and the improper acceptance of the Respondent's nomination papers have materially affected the election, and that consequently, the election of the Respondent is void. We recommend therefore that the election of the respondent be set aside. As regards the costs of the inquiry, our recommendation is that the total amount of costs be paid by the Respondent. These costs will include the costs of the publication of a copy of the notice and of the petition. We further recommend that the pleader's fee for either party be fixed at Rs. 200 and that each party be allowed only one pleader's fee.

S. M. BHAGADE
President
S. GHOSH
Commissioner
J. D. KAPADIA
Commissioner

BOMBAY LEGISLATIVE COUNCIL

BOMBAY CITY SOUTH NON-MUHAMMADAN RURAL

TRICUMDAS DWARKADAS...*Petitioner*

versus

1. SIR VASANTARAO A. DABHOLKAR
2. ALBAN J, D'SOUZA
3. R. T. NARIMAN...*Respondents*

The rule providing that if a candidate withdraws before certain date, his deposit shall be returned to him does not mean that no candidate is to be permitted to withdraw after such date, or that withdrawl at any other time is prohibited.

A bribe given to a candidate to withdraw from the contest even after the date upto which he can withdraw without forfeiting his security, would constitute a corrupt practice, as the purity of elections is to be preserved right up to the end.

The line of demarcation between bribery and charity is very thin. It is a mixed question of law and fact, and in each case the governing motive or intention of the act should be found out. "Charity at election times ought to be kept by politicians in the background", and it is only when the governing motive of the act is pure charity and nothing else, that the act would be held to be innocent, otherwise not. To secure a gift to a particular charity chosen by the recepient would amount to bribery.

The procedure applicable to an enquiry is to be, as nearly as may be, in accordance with that applicable to the trial of suits under the C. P. C., but that enquiry also partakes of the nature of one for the trial of an offence and the standard of proof requiring to bring home the alleged corrupt pratice should be determined accordingly.

It is true that the statute regarding bribery is highly penal, yet in construing penal statutes we must not by refining, defeat the obvious intention of the legislature.

The offence of corruption is complete whenever one party gives or procures money for the purpose of inducing a voter to vote or forbear from voting and that the latter accepts for that purpose, the promise or money so made or given.

Corruption is however, complete without the vote being given, and in case an attempt is made to make a candidate withdraw by corrupt means, corruption is complete, without the said candidate withdrawing even.

Corruptly inducing a candidate to withdraw from the scene of contest is a corrupt practice and amounts to bribery.

All expenses, great or small, connected with the election should be shown in the return of election expenses, whether the candidate incurs the same himself or secures payment from some other person.

Full particulars of each corrupt practice and the date and place of the commission thereof should be given in the petition, and if any amendment is desirable on account of any omission it should be applied for, and unless this is done, it would not be proper to change one corrupt practice into another.

Corruption is complete even when the offer to corrupt is made in case of a person who does not possess the requisite qualifications to accept or succumb to the corrupt offer.

Petitioner is registered as an elector on the electoral roll of the Bombay city (South) Non-Muhammadan Urban constituency of the Bombay Legislative Council to which three seats are allotted. An election was held on 18th Sept. 1930 for electing members thereto, as four candidates, the respondents and one Mr. Ram Chandra M. Bhatt, had stood to contest the election. The last named candidate withdrew from the candidature a few hours after the polling had commenced, and it is the petitioner's allegation that he was induced to withdraw his candidature by the offer or promise of the payment of Rs. 5000, by Sir Vasantrao Dabholkar and Dr. Nariman conjointly with one D. Cowasji and that, as a result thereof, Mr. Bhatt withdrew from the said election and the three remaining candidates were declared duly elected. The petitioner therefore alleges that the two candidates were guilty of corrupt practice at the election within the meaning of Schedule 1, rule 1 of the Bombay electoral rules and prays for that reason that the election of both of them should be declared void.

In giving particulars of the corrupt practice, he relies upon a letter addressed and alleged to have been handed over to Mr. Bhatt, signed by the two respondents and Mr. Cawasji, which runs as follows :—

TOWN HALL
Bombay, 18-9-1930.

DEAR RAM CHANDRA,

We the undersigned promise to pay you Rs. 5,000 only if you withdraw immediately from this contest to avoid the trouble. This amount is placed at your disposal strictly for the purpose of charity as you may desire.

Yours sincerely,

(Sd.) V. A. DABHOLKAR
(Sd.) R. T. NARIMAN
(Sd.) D. CAWASJI.

Thereafter Mr. Ram Chandra Bhatt immediately withdrew announcing the fact of his retirement to the Collector and the voters present at the Town Hall.

Respondent no. 1 denies that he induced Mr. Ram Chandra Bhatt to withdraw from the election by offering the inducement alleged by the petitioner or any inducement or that the latter withdrew in consequence of the offer alleged to have been made, as he had already decided to withdraw and communicated his decision to him and others some time before the conversation regarding payment of Rs. 5,000 took place, that the alleged action on his part does not amount to a corrupt practice, nor was the result of the election affected by it; that the letter does not accurately record the terms of the arrangement, that on seeing the police arresting batch after batch of women *desnsewaks* who had come forward to picket the voters and apprehending trouble from the crowds present there and feeling distressed about the matter, Mr. Ram Chandra Bhatta decided at about 10-30 A.M. to withdraw from the election and communicated that decision to this respondent and others; that he then interviewed Mr. Healy, the Acting Commissioner of Police, and on being assured by him of the possibility of still more trouble, Mr. Bhatta decided to withdraw from the scene of contest; that shortly after he told Respondent 1 and others that the blood of men which had been shed be atoned for by payment of a sum of money to charity; that this idea appealed to the Respondent and eventually the letter was written out, that there was great excitement round about and that the letter does not record the exact arrangement, which was, that Mr. Ram Chandra Bhatta should immediately withdraw from the scene of the contest; that the governing idea was to avoid all further blood-shed and to expatiate for the

blood which had been shed; and lastly that he signed the letter without reading it.

Respondent no. 2 denies the fact of inducing Mr. Bhatta to withdraw as well as the letter was the result of any offer from him; he denies being guilty of a corrupt practice. He alleges that Respondent no. 1 sent for him in presence of Mr. Bhatt that he (Mr. Bhatt) had as a matter of fact retired; that he was asked to sign the letter and he signed it without reading it, as he was then in a state of great excitement and suffered from the effect of heat stroke and feeling giddy; that Mr. Y. Pandit, Mr. Bhatt's agent, had already informed him betore he signed the letter that Mr. Bhatt had actually withdrawn.

The following issues were framed for respondent no. 1 :—

1. Whether Respondent 1 promised conjointly with one D. Cawasji and Respondent no. 2 to pay a sum of Rs. 5,000 to Ram Chandra M. Bhatt with the object of directly or indirectly inducing him to withdraw from being a candidate at the election.

2. Whether as a result of the said promise Ram Chandra M. Bhatt withdrew from being a candidate at the election.

3. Whether Respondent 1 was guilty of the corrupt practice alleged by the petitioner within the meaning of rule 1 of schedule 5. part 1.

4. Whether the result of the election generally has been materially affected by the corrupt practice alleged by the Petitioner on the part of Respondent 1.

5. Whether annexture no. 1 to the list of particulars annexed to the petition correctly represents the arrangement arrived at between R. M. Bhatt and the sigantories other than Respondent 2, of the original of which the said annexture purports to be a photograph.

Respondent no. 2 raised identical issues, issue no. 5 referring to his own case and being as follows—

5. Whether annexture no. 1 to the list of particulars annexed to the petition was signed by Respondent 2 at the time and upon the representation and under the circumstances set out in paragraph 5 of the written statement.

The most important documents in the case are the letter promising payment of Rs. 5,000 to Mr. Bhatt and the letter written by him to the Collector, announcing his withdrawal. They are marked Exibits A and B, Ex. B runs as follows:—

18-9-30
Town Hall. Bombay

To—The Collector of Bombay

Sir,

I beg to withdraw my candidature from the election to the Bombay Legislative Council which please note.

Yours faithfully
(Sd.) R. M. BHATT.

Handed over to me at 11-10. A.M. by Mr. Bhatt.
(Sd.) P. V. D.
18. 9. 30

Collector of Bombay.

18th September 1930.

It is necessary to state that 4th of August was the date fixed for nomination of candidates and 7th August the date for the scrutiny of nominations under rule 11 (3) and (7). It is urged that a withdrawal to be an effective withdrawal should take place under rule 11 (8) before 3 o'clock in the afternoon of the date succeeding that appointed by the local government for the scrutiny of the nominations. The date in this would be 8th August and the hour 3 P. M. Mr. Bhatta's withdrawal at 11-10. A. M. on the 18th Sept. was not an effective withdrawal at all, in fact it is urged that under the rules, there is no provision for withdrawal after the stage in the elections mentioned in rule 11 (8) and hence even if it be found that Mr. Bhatt withdrew from the elections as a result of the promise made in Ex. A, there would be no corrupt practice under the rules. Respondent's contention is that the withdrawal was effective at that stage, and that inducing a candidate to resort to such an action by offer of a gratification would not come under rule 1, part 1 of schedule 5. in support of this contention attention is drawn to the scheme laid down by the rule for holding elections which scheme is to the effect that where the number of candidates who are duly nominated and who have not withdrawn their candidature in the manner and within the time specified in sub-rule 8 of rule 11 exceeds that of the vacancies, a poll shall be taken-rule 14 (1). It is argued that any withdrawal of candidature thereafter does not effect the necessity for taking a poll, and a polling has to go whatever the number of candidates, once the taking of the poll has commenced, the polling has to go on till the last minute fixed for its closing. We are of opinion that the definition of the word" electoral right" does not support the Respondent's conentiion. The words "electoral right" mean the right of a person to

stand or not to stand as, or to withdraw from being a candidate, or to vote or to refrain from voting, at an election. Now in terms of this definition, if a person has a right to stand as a candidate, he has also a right to withdraw from being a candidate, unless that right has been taken away by the rules; and the rules nowhere take away that right, Rule 11 (8), on which reliance has been placed, is to be read along with rule 12 (2). If a candidate by whom a deposit of Rs. 250/- is made under rule 12 (1) withdraws his candidature in the manner and within the time specified in sub-rule (8) of rule 11, his deposit is returned to him, otherwise not. This is not to be read to mean that any other manner of withdrawal or withdrawal at any other time is prohibited. This amount of Rs. 250/- taken as deposit is to provide for the expense of polling in accordance with rule 14 (1) where the number of candidates duly nominated exceed the number of vacancies; and if a candidate withdraws after it has been decided to take a poll, he forfeits the deposit. But thereby his right to withdraw later, if he so desires, is not taken away. It is to be noted that this definition of "Electoral right" occurs in part 7 of the rules, and rule 30, of which the definition forms part runs as follows :—

"In this part and in schedule 5, unless there is any thing repugnant in the subject matter or context, 'electoral right' means right of a person to withdraw from being a candidate at an election. It will be observed that no restriction whatever is placed on his right to withdraw. It is not provided that if it is exercised in the manner and within the time specified in sub-rule (8) of Rule 11, then only would it be effective and not if exercised in any other manner and at any other time. If the legislature wanted to provide for shutting out withdrawal at a stage later than that a specified in sub-rule (8) of rule 11, it would have specifically provided for that. This very word is used in schedule 5, part 1 rule 4 and it cannot be said that it is used in any restricted sense as contended by the respondent it would lead to absurd results. If the object of the legislature was to preserve the purity of franchise and the purity of elections, then, reading the word in a restricted sense would defeat that object. Because it would be open to any candidate or any person to offer bribe to a candidate at the time when the polling is actually in progress, to withdraw from the election, and thereby facilitate the election of the remaining candidates, as they would have to face one rival the less, and still it would not be a corrupt practice. Several English cases were cited in the course of the argument to show that interference with voters by way of bribery, etc., was a corrupt practice. There is no

reason why the principle of those cases should not govern the cases of interference with candidates. The purity of election has to be preserved right upto the end; it is not, therefore, conceivable, that if a bribe is offered to a candidate to withdraw in the midst of the polling, it would not be an offence because, withdrawal to be an effective withdrawal, could only take place in the manner and at the time specified in sub-rule (8) of rule 11. We may also point out that if the interpretation will have made the offence of bribery under section 171 (B) of the P.C. much wider than the corrupt practice under the rules. We, therefore find that there is no substance in the contention that, withdrawal after the time specified in sub-rule (8), rule 11 being ineffective, no corrupt practice can be committed under the rules in respect of such a withdrawal.

Another question raised on behalf of the respondents was that the promise of payment to Mr. Bhatta was meant strictly for charity and therefore there would be no corrupt motive behind it. English cases bearing on the point in respect of charitable acts of candidates towards voters were cited, including Wigan's case 1881 O'M. and H. 13, where the remark is made by Bowen, J., that "Charity at election times ought to be kept by politicians in the background." These cases lay down that in each case the govering motive or intention of the act should be found; if it be found to be purely charity and nothing else the act would be innocent, otherwise, not, and that the line of demarcation between a pure and corrupt motive is very thin. It is a mixed question of law and fact, from the evidence given at this trial we find that the object or motive with which the promise to pay Rs. 5,000 to Mr. Bhatta was made by the respondents to induce him to withdraw from the contest and thus make their position safe and their election a walk over. That was the governing idea and not one to benefit any charity; that the money was to go to charity strictly, was a subsidiary motive and of secondary importance. The object in the first instance was not to benefit any charity nor to expatiate or atone for any sins of bloodshed; when in fact there was no bloodshed but to get Mr. Bhatt out of the way under the cloak of a contribution to charity. The parties knew that a direct promise to pay money a candidate who continued to be a candidate to make him withdraw was an offence. They therefore resorted to this device of clothing it as charity and thus escape the consequence of that act.

These law points being thus disposed of, we have now to find on the facts (1) whether it was in consequence of the offer

of this inducement that Mr. Bhatta withdrew, or whether he had already, i.e., before the offer was made to him, decided to withdraw and that the promise was merely a solatium: (2) whether Ex. B was written before or after Ex. A. (3) whether the letter Ex. A represents accurately the terms of the arrangements between the parties: (4) whether Respondents were aware of the contents of documents which they put their signature or not; and generally (5) whether the case set out by the Respondents in their written statements has been proved.

The onus of proving that the written document did not record the arrangement made between the parties to it, and that the Respondents signed it without reading it, lay heavily on them.

It is argued that this inquiry is not in the nature of the civil inquiry, but a penal or at least a *quasi* criminal inquiry, and that therefore the evidence should be considered as at a criminal trial, and if there is a doubt in the Commissioner's minds as to the proof of the charge, the benefit of the doubt should be given to them. We are aware that under rule 37 the procedure applicable to the inquiry is to be as nearly as may be, in accordance with that applicable to the trial of suits under the C. P. C. 1908, but that the inquiry partakes also of the nature of one for the trial of an offence cannot be denied—*See* Grant v. Overseers of Pagham, (1877) 3 C. P. d., page 100. The standard of proof required to bring home the alleged corrupt pratices to the Respondents should be determined accordingly.

The truth seems to appear to us to be that Mr. Bhatta agreed to withdraw only on a written assurance being given by the Respondents that they would pay Rs. 5,000 as a consideration for his withdrawal, he assuring them that he would spend the money strictly in charity, such as he would approve of. We accordingly find that it is not true that Mr. Bhatta had already retired before Exh. A was signed, and that it was passed in order to induce Mr. Bhatta to retire from the contest.

That Mr. Bhatta did retire after Exh. A was signed is also proved ; but, even if he had not and even could not have withdrawn from being a candidate, so far as the signatories are concerned, it is enough in our opinion if they have offered or promised the gratification of paying Rs. 5,000 to induce him to withdraw to bring their action within the purview of Rule 1, part 1, schedule 5 (*See* Rogers on Elections vol. 2, p. 269 edition 1928.) On this point it is instructive to see what Culeridge J. says in a similar case—Henslow v. Faweet 3 Ad. and Ellie.

p. 51 at p. 58:—"it is true that this is a statute highly penal, yet in construing penal statutes we must not by refining, defeat the obvious intention of the Legislature. The question here is as to the meaning of the word "corrupt". My brother Stroke argues as if corrupting and procuring to vote or forbear to vote were the same thing. Sulston V-Norton (3 Burr, 1235) distinctly shows that it is not so, and that a person may be guilty of corrupting who has not been guilty of procuring. It is not unimportant to look to other circumstances which are parcel as it were, of the statutable provision against bribery. Now it has been decided to be immaterial whether the party to whom the money is given or promised vote or not and even whether have not a right to vote.....It appears to me that the offence of corruption is complete wherever one party gives or promises money for the purpose of inducing the other to vote or forbear from voting and that professedly accepts for that purpose, the promise or money so made or given. Thus the offence is complete by the one giving with such intention and the other professedly accepting with such intention. He who gives under these circumstances and with the purpose appears to me to be corrupt and he who accepts, to be corrupted, within the meaning of this Act. "We accept the principle of this decision and applying it to the facts of this case, we find that the corrupt practice was complete when the offer was made to Mr. Bhatta to withdraw from the contest, and he accepted it professedly with that intention, irrespective of the question whether under the rules he could or could not withdraw at that stage.

Turning now to the question whether Exh. A represents correctly the terms of the arrangement arrived at between Mr. Bhatta and the signatories and as to whether the signatories were aware of the contents thereof, we find that there is no difference between the terms as settled and those incorporated in Exh. A.

We cannot believe respondent no. 1 when he says that he did not know the contents of Exh. A. As to respondent no. 2 he is not a novice in the game of buying off rivals. He has admitted that at a prior election in March 1930, he paid one of his rivals, Rs. 750 and the other Rs. 1,000 to withdraw from the contest and they withdrew and he was elected. This expense was not shown in his return of election expenses. This fact was brought out in his cross examination; a question to that effect was put by petitioner's learned counsel and objected to by respondent no. 2's learned counsel. The commissioners

allowed it to be put having regard to section 146 (3) of the Evidence Act. Respondent no. 2's learned counsel has asked us to grant a certificate of indemnity under section 8 (1)(2) part 2 of Act 39 of 1920. We are of opinion that as he has answered truly all questions which in this respect he was bound to answer, such a certificate of indemnity in respect of that action which is likely to incriminate him and expose him to a penalty may be granted and we accordingly grant it.

This is also proper place to report the action of Respondent no 1. It seems that one of his relatives who had been working for him had employed a man one Ratan Lal by name for the purposes of his election. He sent notices to Respondent no. 1 to be paid the balance of his remuneration. Respondent no. 1 did not pay but sent on the notices to his relative, who according to him must have paid Ratan Lal, and thereafter no further notices were sent to him. He has not paid that relative, but according to rule 19 (2) part K of Form 5 such expenses have to to be shown in the return of election expenses. That he has not shown in his return is admitted and he gives two reasons for the omission (1) that he did not know that any such expenses have to be shown in the return and (2) that he got the notices long after he sent in the return of expenses. As the petition before us does not charge Respondent no. 1 with any corrupt practice in that connection we merely record the fact in our report.

Thus our findings on the first five issues are in the affirmative, and we hold accordingly that the election of Respondent no. 1 is void.

The same would be our findings on the issues raised by Respondent no. 2, the findings on issue no. 6 being that the election of Respondent no. 2 is void.

It was alternatively argued on behalf of the petitioner that if on the fact disclosed at the trial a corrupt practice under schedule 5, part 1, Rule 1 (a) cannot be proved but one under rule 1 be found to be proved i.e., a promise of any gratification to a candidate as a reward for having withdrawn, then a finding should be given accordingly. A Privy Council ruling I.R. 7 I.A., p. 240 Rajrup v. Abul was cited in support. Really speaking on the above findings no occasion for considering the question arises, but all the same we would point out that rule 33 (2) requires full particulars of each corrupt practice and the date and place of commission thereof to be set out in the petition and if any amendment is desired on account of any omission, then it should be applied for under

sub-rule (3) and unless that is done it would not be proper to change one corrupt practice into another.

As for Mr. Dinshaw Cawasji, it follows from the above findings that he has been guilty of the commission of the same corrupt practice as Respondents 1 and 2 under Schedule 5, part 2, rule 1 *viz.* making an offer or promise of a gratification to a candidate with the object of inducing him to withdraw from being a candidate at an election.

As for Mr. Bhatt it is further argued that Mr. Bhatt's action would merely amount to an attempt (unauthorised attempt) to withdraw and that such an attempt was not made penal by schedule 5, part 2, rule 3, just as it is made an offence by section 511 of the I. P. C. We have already said that we do not accept his contention about the withdrawal being invalid and therefore there is no need to deal with this part of his contention. But, if it be necessary, we would refer, in this connection to the following observations (at p. 57) of Patterson J. in Henslow *v.* Fawcett cited before. "The corruption is complete without the vote being given", i.e., in this case the corruption is complete without Mr. Bhatt's withdrawing. Coleridge J's observations go further and are to the effect that if the acceptor of the offer does not possess the right to vote and still professes to accept it, as such, the corruption is complete, i.e. in this case even though Mr. Bhatt did not possess the right to withdraw and that as his learned counsel says, he has, the right to come back at 2-30 P. M. and claim a polling of the votes in his favour as a continuing candidate, the corruption was complete the moment he accepted the offer which he did by (1) delivering Ex. B to the Collector and (2) by going away from the Town Hall. It is true that the rules do not make a specific provision for such a withdrawal, but on the other hand they do not prohibit a candidate from withdrawing at any time after the date of scrutiny if he desires to do so.

Then it is said that Mr. Bhatt being a rich man would not stoop to commit a corrupt practice for the sake of Rs. 5,000. But what if he thought that thereby he was benefitting some charity or other without his having spent a single pie? In that respect his case is very similar to that cited by the learned Advocate General's representative Mr. Billimoria Imperator *v.* Appaji- I. L. R. 21 Bom., p. 517. There the Mahars of a certain village who had been suspended from their office attended a meeting held at the house of their Patel at which the Patel was present and agreed to pay a sum of Rs. 300 towards the repair of the village temple and not to the

Patel if they were restored to office, and it was held that the Patel had committed an offence under section 161 of the I. P. C. The observations of Macleod, C. J., at pp. 343-44 in the case of Emperor v. Amiruddin, 24 Bom. Law Reporter, p. 534 are also appropriate and instructive. We may say that the intention or motive of the signatories in promising the amount to Mr. Bhatt was to get him out of the way and to "avoid trouble" as recited in Exh. A. Mr. Bhatt's intention or motive was to earn some money for a charity and thereby secure a sort of gratification for himself—a something which would please him by becoming the instrument of benefiting a charity of his choice.

We therefore report that the election of Respondents 1 and 2 has been induced by a corrupt practice and that the result of the election has been materially affected by a corrupt practice, and that their election is void. We further find that a corrupt practice under schedule 5, part 2 rule 3 has been proved against Mr. Bhatt and Mr. Dinshaw Cawasji has been proved to be guilty of a corrupt practice in schedule 5, part 2, rule 1. We do not recommend that he be exempted from any disqualification incurred in this connection under rule 5 (3).

As for costs, we recommend that all costs of and incidental to the setting up of the Commission be in the first instance recovered by the Government from the petitioner and that the same be retained out of the amount deposited by him and the balance remaining thereafter be recovered from him personally. That the same be paid by the Respondents 1 and 2 to the petitioner, and that Respondent no. 2 if he pays the whole amount to the petitioner, do recover a sum of Rs. 4,000 for his costs from the Respondents and that Respondent no. 2, if he pays the whole amount to the petitioner, do recover four-fifths of the same from respondent no. 1, and we further recommend that the Advocate General do recover Rs. 600- for his costs from the respondents and that if Respondent no. 2 pays the above amount he do recover four-fifths of the same from Respondent no. 1. Respondents no. 1 and 2 to bear their own costs.

KRISHNA LAL M. JHAVERI
F. X. DESOUZA
V. G. DALVI.

UNITED PROVINCES LEGISLATIVE COUNCIL BULADSHAHR DISTRICT WEST NON-MUHAMMADAN RURAL

THAKUR UDYA VIR SINGH...*Petitioner*

versus

MR. ARJUNA...*Respondent*

It is permissible for a candidate to deposit the security after 3 P.M. on the date of the nomination.

The failure to appoint an election agent after the revocation of the appointment of a former election agent is only an irregularity, but it will not justify the setting aside of the election unless it is shown that the result of the election was materially affected thereby.

A leaflet published on behalf of the secretary of a committee which supported the Respondent called the petitioner "Khudgarz" and "Deshdrohi", but the words referred to his conduct in seeking election against the wishes of the Congress, and also stated that the petitioner, while a member of the council had voted for high salaries to be reserved for Europeans; held that the statements referred only to the Petitioner's actions in his public capacity, and did not amount to a corrupt practice.

For the purposes of rule requiring the descriptions of payees to be given in the return of election expenses, it is desirable that a man's parentage, caste, and residence should be given, but the law does absolutely insist on this; it is enough if a man is so described as to leave no reason for doubt as to his identity.

The failure of the election agent to sign the return of election expenses, and absence of details required in part C of the return of election expenses are material irregularities, which entail this disqualification both of the candidate and his election agent.

As a result of the polling that took place on September 27, 1930 Arjun was declared elected by an overwhelming majority. The petitioner now challenges the validity of Arjun's election on the ground of the corrupt practices setforth in detail in his petition. He also alleges that Arjun did not deposit the security within the time allowed by the rules, and

that he withdrew his candidature and revoked the authority of his election agent four days before the election and that the return of the election expenses was not lodged in the manner prescribed by the rules and was false in material particulars. Arjun denies these allegations and contends that his election was not invalid. We framed issues as follows :—

1. Did the Respondent deposit security in the manner required by the rules. If not, were the rules infringed, and what effect should such infringement have ?

Issue no. 2:—Were the applications filed by the Respondent before the Returning Officer on September 23, obtained by the Petitioner's fraud or by the exercise of undue influence by the Petitioner ? What is the legal effect of these applications and of the application filed by the Respondent on Sep. 26 ? Was the result of the election materially affected by Arjun's failure to appoint another election agent, and to declare his name in writing to the Returning Officer on or after September 23 ?

Issue no. 3:—Was the paper marked A printed and published with the connivance, aid or knowledge of the Respondent or by his agent, Khubi Ram ? Was the said paper distributed by the Respondent or by his agent, Khubi Ram or by others on behalf of either ? Are the statements contained therein, and particularly those marked by the petitioner, false or defamatory or both ? If so, was result of the election materially affected by the issue of this paper ?

Issue no. 4:—Was the paper, marked B, printed and published with the connivance or knowledge of the Respondent or his agent Khubi Ram ? Was this paper distributed by the Respondent or his election agent or other on behalf of either ?

Issue no. 5:—Did the respondent employ hired lorries to convey voters to Jahangirpur and Pahsu polling stations on September 27, 1930 ?

Issue no. 6 :—Was an entertainment organised at Pahsu polling station ? If so, was this with the connivance of the Respondent or his agents ?

Issue no. 7 :—Were voters threatened with social excommunication at Ghatal on September 27 ? If so, was this with the connivance of the Respondent or his agents ?

Issue no. 8 :—Were persons acting for the petitioner forcibly removed from the precincts of the Jahangirpur polling station on September 27 ? If so, was this with the connivance of the respondent or of his agents ?

Issues no. 9:—Were voters threatened at Khurja? Chatari, Pahsu, Jahangirpur, Sikanderabad, Dadari, Chola, Cholas, and Jewar? If so, was this with the connivance of the Respondent or of his agents? Did the Respondent himself threaten voters at Khurja?

Issue no. 10:—Should the election of the Respondent be declared void and set aside? Should the petitioner be declared duly elected? What should be the order as to costs including counsel's fees?

Issue no. 11:—Did the respondent file a true return of election expenses? Was the return filed invalid as not being signed by the respondent's election agent? If so, what is the legal effect?

Findings

Issue no. 1:—The petitioner's case on this issue was that the respondent's security money was deposited on the date of nomination after 3 P.M. and that the rules require that the deposit should be made not later than the date of nomination and before 3 P.M. The respondent contends in the first place that the rules permit deposit after 3 P.M. on the date of nomination and in the second place that deposit was actually made on that date before 3 P. M. After the respondent's counsel concluded his argument the petitioner declared that he withdrew on this issue. We therefore consider it sufficient to state that in our opinion the rules permit deposit after 3 P.M. on the date of nomination and that in fact deposit was made in this case before 3 P.M. Our finding therefore on this issue is against the petitioner.

Issue no. 2:—On September 23, the respondent admittedly filed before the Returning Officer, the Collector of Bulandshahr, an application Ex. 3. This application set out that the Respondent's name should be struck off the list of candidates and that Khubi Ram, his election agent should be removed from the post of election agent. In so far as this purported to to be an application of withdrawal by the respondent it had no legal effect, for the time within which the Respondent could have withdrawn had passed. In so far as it purported to be an application for the revocation of the appointment of an election agent, it was irregular, in as much as another election agent was not forthwith appointed and declared. On Sep. 26, the respondent made to the Returning Officer an application Ex. 4 purporting to withdraw the application Ex. 3. This application sets out that if the Respondent's election agent's

authority be deemed to have been withdrawn by the application of September 23, the respondent hereby reappoints the same man as his election agent.

We are of opinion that Khubi Ram was undoubtedly the Respondent's election agent upto September 23, and that in view of the application Ex. 4 he was the respondent's election agent from Sept. 26 onwards. He may not have been the Respondent's election agent between the 23rd and the 26th and in that event there was a breach of the rule which requires a fresh election agent to be appointed immediately following the revocation of the appointment of an election agent. But a breach of that rule does not necessarily invalidate an election Whether it does or does not invalidate and election depends on whether the result of the election was materially affected by the breach of the rule. It can hardly be suggested that the result of the election was in the slightest degree affective by the breach of the rule. All that the petitioner has suggested is that he was misled by the application of September 23, into suspending his activities and that it was not until September 26th that he learnt that inspite of the application of the 23rd there would be a poll and the poll actually took place the next day, September 27. As to this we are in the first place not satisfied that the petitioner did suspend his activities inspite of his assertion to that effect given as a witness. The petitioner is not only a lawyer by profession but is also a politician of some experience, who has already sat in the Legislative Council and who at the last General election was a candidate for more than one constituency and was also a candidate for the Legislative Assembly. We find it difficult to believe that a person of that character would suspend all activity in the eye of an election in consequence of such an application as Ex. 3 made by his opponent. On facts the learned commissioners held that "it is not proved that the applications Ex. 3 was filed by any fraud or undue influence brought on the respondent."

Issue no. 3:—This issue concers the leaflet a copy of which is Ex. 9. This leaflet purports to be issued by the secretary of a body describing itself as the Congress election boycott committee. There is no doubt that, if not the Congress officially, at all events a large number of Congressmen, supported the respondent's candidature. Admittedly this leaflet was widely distributed in the constituency for sometime before the polling day. There are three points in the leaflet to which the petition takes objection. He is described in it as self-seeking (khudgarz); as an enemy of the country (desh

drohi) and it is said that he made a speech in Council recommending that highly paid posts should be reserved for Europeans and not given to Indians. As to the expression "khudgarz" and "deshdrohi" these in the first place would appear to constitute mere abuse as distinct from defamation, and in the second place it is clear from the context of Ex. 9 that they refer to the conduct of the petitioner as a public man, that is to say as to his conduct in submitting to a nomination as a candidate at the election, and not to anything in the private life of the petitioner. The leaflet begins by setting out that in circumstances in which the country stands only self-seeking people could agree to accept nomination to the Council and goes on to describe the petitioner as self seeking and an enemy of the country. It is clear that what is meant is that all persons who accept nomination must be self-seeking and enemies of the country and therefore the petitioner who accepts nomination must be such. We need not comment on the merits of such a contention. It is enough to say that the attack on the petitioner is clearly an attack on him in his public capacity. He is attacked because in spite of the recommendation of the Congress to the contrary he insists on standing for election to the Council. There is no suggestion that he has ever in any other respect conducted himself in such a manner as to justify the epithets "khudgarz" and "deshdrohi".

As to the reference to a speech alleged to have been made by the petitioner when he was a member of the Council in March 1930, the facts set out in the leaflet are certainly untrue and no attempt has been made to argue otherwise. An official report of the speech has been produced and it is obvious that the petitioner never said that high posts should be reserved for Europeans or anything like it. But here again the attack is obviously on the public conduct of the petitioner.

The petitioner suggests that distribution of the leaflet Ex. 9 constituted a corrupt practice under the definition given in schedule 5, part 1 paragraph 4. But the paragraph 4 confines itself to statements made in relation to the personal character and conduct of any candidate. The statements complained of whether reasonable or unreasonable and whether true or false, were statements in relation to the public not to the personal character or conduct of the petitioner; and their publication did not therefore amount to a corrupt practice within the meaning of the rules. This being our opinion it is unnecessary to discuss the issue further. It is enough to say that this leaflet was admittedly distributed for some days before the election by persons supporting the respondent's candidature.

Issue no. 4 :—Issue no. 4 retates to the leaflet desc.ibed in the petition as paper B. No attempt is made by the petitioner to justify it. The Respondent's case practically amounts to this that the leaflet was not in existence before the 27th of September, which was the polling day, and that it had been printed by the petitioner himself in order to support his election petition.

We find it enough on this particular issue no. 4 to say that we find it almost impossible to believe that it was issued as the petitioner alleges. It is a most extraordinary document and begins by setting out that certain Congress people have nominated the Respondent as a candidate for the Council against his wish. This is curiously reminiscent of the opening of Ex. 3, the Respondent's application to the Returning Officer dated the 23rd of September, a document which there is at least reason to suspect was drawn up by the petitioner himself; and it is a most amazing way in which to open a leaflet which on the petitioner's case was intended as propaganda in favour of the Respondent who was, as has been set out above, strongly supported by a number of Congressmen, if not officially by the Congress itself. The leaflet goes on to say that the Responden's brothers (whoever they may be) should vote for him, and that those who do not vote for him will be cursed by God and charged for their conduct on the day of judgment; and it concludes by setting out that if the Respondent is elected he will give a feast to all his brothers. Regarded as propaganda; and improper propaganda, this is on the face of it most ineffective, and could hardly have been supposed anything but ineffective by any type of intelligence. The vague suggestion that the Respondent, if elected, will give a feast to all his brothers, without any suggestion who his brothers are, could hardly be expected to influence the voting. And the reference to the deity and the day of judgment is not backed by any authority which could lead voters to suppose that failure to vote for the Respondent would indeed incur the Divine wrath. On the other hand as a piece of evidence for the petitioner the leaflet is obviously handy. It briefly sets out an offer of a bribe and the invocation of Divine displeasure, those both amounting to corrupt practices within the rules, and it also sets out that the Respondent is a mere dummy put up by the Congress a point on which the petitioner has always laid great stress.

It therefore appears to us from a study of the document itself almost impossible to suppose that it was issued either by Arjun or by any other person genuinely acting on his behalf.

There is no definite evidence that it was issued by the petitioner before or after the 27th September but we find it difficult on a study of the document itself to resist the suspicion that this was so. There is another consideration in this connection. The petitioner states in his evidence that during the election campaign he saw no less than 50—60 copies of this notice in various places and he sets out that he first saw a copy of this notice at the very least before the polling day. He also sets out that he was quite aware when he read the notice that it was not only objectionable in a general sense, but was also against the law. He sets out that he complained to certain influential Congressmen who told him that it was ordinary election tactics. The petitioner is a barrister and experienced lawyer, and an experienced politician. According to his own admission, he saw copy after copy of this notice which he knew to be illegal affixed in village after village some days before the polling day, and yet he would have us believe that he did not make any complaint to any official. We find it very difficult indeed to believe that was so. We very much fear that the reason that the petitioner made no complaint was the sufficient reason that this leaflet was not in fact in existence.

Our finding therefore on issue no. 4 is that the petitioner has failed to prove his case.

After discussing the oral evidence at length, the learned commissioners remarked as follows :—

"Our conclusion both on issue no. 7 and on issue no. 9 is that the petitioner has failed to prove his case. Generally speaking we suspect the good faith of many of the petitioner's witnesses and we fear that false evidence has been adduced deliberately. That persons with Congress sympathies conducted active propaganda on behalf of the Respondent in a number of villages before the 27th of September and possibly in the vicinity of a number of polling stations on the 27th of September may be accepted. But in the absence of any of the officials on duty at the polling station we find it impossible to believe that the state of affairs was anything like what the petitioner's witnesses generally describe it to have been.

There is an objection to an item of fee paid to Laxmi Chandra Vakil Rs.'10. Admittedly this was paid on the third or fourth of September, probably on the 14th of September. Payment, under the rules, had to be supported by a voucher, and it appears that the voucher, in the shape of a receipt from Laxmi Chandra, was not given until the 25th of October. Payment was therefore entered as made on the 25th of October, although

the receipt itself showed the money received on the 4th of September. We consider this slight irregularity, if it is an irregularity, quite immaterial.

The petitioner's next objection is that the election returns do not give an adequate description of the payees. But in point of fact no mistake could have been made about the identity of any single payee with one possible exception, Hira Lal who was paid Rs. 30- for coying the electoral rolls. The failure to give this man's address, his father's name and so forth could not in any way have inconvenienced the petitioner who, if he had really supposed that Rs. 30- were not paid to Hira Lal but to some one else, could easily have asked for further particulars of the man. It is perhaps desirable that payees' father's names, castes and residence should be given wherever possible. But we would not lay it down that the law absolutely insists on this. It is enough in our opinion that a man should be so described as to leave no room for doubt of his identity. With the possible exception of Hira Lal and the Stamp vendor whose name is not given there can be no doubt of the identity of the persons set out in the Respondent's return of election expenses.

The petitioner also objects, although there was nothing about it in his petition, that the Respondent did not keep regular books of account as required by the rules. On the admissions of the Respondent's own witnesses regular books of account were not kept. They should have been kept and we consider it our duty to admonish and to warn both the Respondent and his election agent on this account. But in the particular circumstances of the case we see no reason to suppose that failure to keep these account books was due to anything worse than negligence. We see no reason to suppose that the return of election expenses is false in any material particular.

Apart from the Respondent's failure to keep regular books of account, a duty laid upon him by the rules, but for the neglect of which no definite penalty has been assigned, there are two matters not raised by the petitioner himself but noticed by the commissioners in course of the enquiry. These two matters have some practical importance and require discussion, and the most convenient place to discuss them is under the head of Issue 11, although they are not actually embodied in that issue.

The result of the failure of the Respondent's agent to sign the return and the failure of the Respondent and his agent to show in part C of the return of the details required by the rules is that the Respondent and his agent have incurred the disqualification set out in paragraph 5 (4) of the rules, the effect of

which is set out in paragraph 25 of the rules. That is to say, unless Your Excellency see fit to exercise the power conferred upon you by the second part of paragraph 5 (4) of the rules, you will declare the seat to be vacant under paragraph 25.

The first point is that the Respondent in part C of his election return has not set out the details that the rules require. He has set out 4 items of expense, one of Rs. 10- given to Kanchi Singh for travelling expenses on canvassing; one of Rs. 10-11 given to Har Swarup Mehta for his travelling expenses as polling agent; one of Rs. 10-6 to Narain Prasad for his travelling expenses as polling agent; and one of Rs. 3- to Prabhu Lal for travelling expenses on canvassing. These are supported by vouchers in the shape of receipts from the payees. But no details of the expenditure of the payees are shown. It is true that the sums are small. But the rules require full details to be given and as a matter of principle it is essential that full details should be given. If the rules are interpreted as permitting a bare statement that a certain polling agent or canvasser spent Rs. 10-, without any further detail, then they will have to be interpreted as permitting a bare statement that an agent or canvasser spent Rs. 100/, without any further detail and although there might be no great practical objection in the case of small sums, there would certainly be great practical objection in the case of large sums. In our opinion the manner in which the Respondent and his election agent filed the return of election expenses was not that prescribed by the rules in respect of their return in part C.

The second point is somewhat curious. The petitioner, it will be remembered, took the objection that the return of expenses was invalid in as much as it was signed by Khubi Ram who was not the Respondent's election agent when he signed it. We have already found that Khubi Ram was the Respondent's election agent from the 26th of September onwards. It was overlooked both by the petitioner and the Respondent that in point of fact Khubi Ram had not signed the return of election expenses at all. This was signed only by the Respondent. Learned Counsel for the Respondent who was given full opportunity of answering this objection as well as the objection discussed in the preceding paragraph, argued that under the rules it is only the form of declaration accompanying the return of election expenses that has to be signed by the candidate and his election agent and the actual paper on which the return is written need not so be signed. He supports this argument by pointing to the form itself which provides a space

for signatures at the end of the declaration and no such space at the end of the return. The commissioners are unable to accept this argument. In their opinion it is clear that both paper, the return and the declaration require the signatures both of the candidate and of his agent. In as much as the agent of the Respondent did not sign the return of election expenses the commissioners are forced to the conclusion that this return was not lodged in the manner prescribed by the rules.

Petition rejected. Petitioner to pay the Respondent Rs. 400/ as costs.

The commissioners also reported as follows :—

We therefore report that we have no reasons to suppose that either the Respondent or his election agent or any person acting on behalf of either was guilty of any corrupt practice; that we have no reason to suppose that the return of expenses filed by the Respondent is false in any material particular; and that the Respondent and his agent were guilty of four irregularities. The first was constituted by the Respondent's failure on the 23rd of September forthwith to appoint an election agent in place of the agent whose authority he revoked on that date. The second was constituted by the failure of the Respondent and his election agent to keep proper accounts. The third constitued by their failure to give in part C of their return of election expenses the details required by the rule and the fourth was constitued by the failure of the Respondent's election agent to sign the return of election expenses. A penalty is imposed on the first irregularity only in the event of it having a material effect on the election and we consider that it had no material effect. No penalty is imposed on the second irregularity nor do we consider desirable in this particular case that a penalty should be imposed. We therefore conclude that the Respondent Arjun the returned candidate was duly elected.

D. C. HUNTER

HARI HAR PRASAD

ABDUL HALIM

UNITED PROVINCES LEGISLATIVE COUNCIL CAWNPORE DISTRICT N. M. R

RAI SAHEB BHAGWAN DAS...*Petitioner*

versus

THAKUR BISHAMBHAR SINGH...*Respondent*

A disbaling statute must be strictly construed. The rule of strict construction requires that an enactment shall be so construed that no cases shall be held to fall within it which do not come within the reasonable meaning of its terms and within its meaning and scope. Where an enactment entails penal consequences, no violence should be done to its language in order to bring people within it. On the contrary care should be taken that no case is included therein which does not come clearly within its terms

There is no provision in the rules to the effect that if a person is registered as an elector in more than one general constituency, he cannot vote or stand from any one of them. He can only vote and stand as a candidate from one of them.

The ordinary presumption of law in that where a certain procedure has to be followed in doing a certain thing, then the said procedure has been followed, until the contrary is shown.

There is a distinction between jurisdiction improperly exercised and want of jurisdiction. If the authority passing the order had jurisdiction, it can not be said that the order is improper only because the authority has erred in the exercise of its jurisdiction.

The electoral roll as amended by the orders of the District Magistrate is final as regards qualifications of voters, except in case of persons prohibited from being voters by statute or by Common Law of Parliament.

The non-filing of a return of election expenses within time does not disentitle a candidate from filing a petition. It only subjects him to a future disqualification for 5 years.

There is no provision in the rules requiring a return of election expenses to be delivered to the Returning Officer personally.

The improper refusal of a nomination paper is a grave irregularity that raises a very strong presumption that the election has been materially affected by it.

Doubt was expressed as to whether an unsuccessful candidate is required to file a return of election expenses or not.

On the pleadings of the parties the following issues were framed :—

1. Was the nomination paper of Rai Saheb Bhagwan Das improperly rejected upon the ground that his name appears as a voter in two electoral rolls, one of them being the electoral roll of the constituency for which he was nominated ?

2. Is the Respondent entitled to question the validity of the nomination of the petitioner on the grounds other than those on which the nomination paper was rejected by the Returning Officer ?

3. (a) Was the name of the petitioner entered in the electoral roll of the constituency for which he was nominated on the day of nomination ?

(b) If so, was it improperly entered therein ?

(c) Is the question whether the entry was made improperly, one which can be raised before the tribunal ?

(d) If the petitioner's name was entered in the electoral roll of the Cawnpore N. M. Urban constituency and he wrongly described himself in the nomination paper as being an elector in the Cawnpore N. M. R. constituency would that render the nomination paper invalid ?

4. Were the petitioner's proposer and seconder identical with persons whose electoral numbers are given in the nomination paper as the numbers of the proposer and seconder ?

5. Was the return of election expenses incurred by the petitioner properly lodged within the prescribed time ? Was it necessary for him to lodge any return of election expenses, and if the return was properly lodged, was it false in any material particular ?

6. If the nomination paper of the petitioner was improperly rejected, would that improper rejection materially affect the result of the election ?

7. Was the constituency in which the petitioner claimed to be a voter wrongly described in his nomination paper, and if so, how does that affect the result of those proceedings ?

Issue no. 1 :—The name of the petitioner was entered in the electoral roll of the Urban Constituency of the City of Cawnpore and when the electoral roll for the N. M. Rural constituency was being revised, he on July 30,1930 applied to have his name entered in that constituency and the revising authority ordered his name to be so entered. It has now been strenuously contended on behalf of the Respondent that in view of the last proviso to rule 7 (1) of the United Provinces Electoral rules, which lays down that no person shall be entitled to have his name registered on the electoral roll of more than one general constituency, the nomination paper of the petitioner has been rightly rejected and that he could neither vote nor stand in either constituency. Now the reason on which the Returning Officer can refuse any nomination paper are given in Regulation 9 (1) of the Regulation for the election of members to the Legislative Council of the United Provinces. There is no reference in this sub-regulation to any disability arising from registration in more than one constituency. Rules 7 deals with the general conditions of registration and disqualification of a voter and one of the disqualifications for being registered as voter in a general constituency is given in the last proviso of sub-rule (1) that if a person is registered as a voter in one general constituency, he cannot have himself registered as a voter in another constituency. The above sub-rule in fact seems to contemplate the possibility of error in the preparation of the electoral roll, a duty performed by a registering authority appointed by the Local Government and not by the voters. It does not seem to attach any disability to a voter merely because of an error in the rolls, but if a voter were to take advantage of the above error and were to vote at a general election in more than one general constituency, he is penalised to the extent that his vote is void as laid down in rule 10 (2). Rule 10 (2) is a penal clause and provides that no person shall vote at any general election in more than one general constituency. The above rules seem to suggest that if a person is registered as a voter in more than one general constituency, he can exercise his right of voting in one of those general constituencies but not in all of them. This shows that in spite of the registration of a person on the electoral rolls of two separate general constituencies he does not cease to be a voter of those constituencies and can exercise his right of vote in one of those constituencies, there does not

seem to be any reason why he cannot stand as a candidate from one of those constituencies.

If the legislature had really intended that a person whose name was registered in two electoral rolls could not stand as a candidate from any of those constituencies, it would have clearly manifested it in express words or at least by clear implication and beyond reasonable doubt. A disability rule must always be strictly construed. The rule of strict construction requsires that an enactment shall be so construed that no cases shall be held to fall within it which do not come within the reasonable meaning of its terms and within its spirit and scope. Where an enactment entails penal consequences, no violence must be done to its language in order to bring people within it. On the contrary, care must be taken that no case is included therein which does not clearly come under its express terms (Maxwell's Interpretation of statutes, 4th Edition, page 396). There is no provision in the rules, that a person who is registered in the electoral rolls of two general constituencies cannot stand as a candidate from one of those constituencies, and we can find no justification for an attempt to read it into the rules. We are, therefore, of opinion that there is nothing in the Electoral Rules to warrant the finding of the Returning Officer, that because the name of the petitioner appeared on the electoral rolls of two constituencies he was disqualified as a candidate in one of them.

It was urged that as it was at the instance of the petitioner himself that his name was entered in the electoral roll of the N. M. Rural constituency, so he was estopped from standing as a candidate from that constituency. We do not think that any question of estoppel arises in such cases, as it cannot be said that the petitioner by any act or omission or declaration of his induced the Respondent to do anything which he would not otherwise have done or to change his position. There is nothing in the present case to show that the Respondent stood as a candidate merely because the petitioner got his name entered in the electoral roll of both the constituencies and otherwise would not have done so.

We, therefore hold that the nomination of the petitioner was wrongly rejected.

No. 2.—In view of our findings it is unnecessary to decide this issue.

Issue No. 3—(a):—The evidence of Babu Mangali Prasad, election clerk, shows that after the preliminary roll of the N. M. Rural constituency, Cawnpore, had been published and the name of the petitioner did not appear in it, he on the 30th

July, 1930 applied to have his name entered in the said electoral roll of the N. M. Rural constituency, Cawnpore, and in pursuance of the Government orders a notice was put up outside the court that the application would be considered on the 15th of August, 1930, and when no objection was made to the above application on or before that date an order was passed by the revising authority that the name of the petitioner be entered in the electoral roll and his name was so entered in the supplementary list of which one copy was sent to the tehsil and another was hung up outside the Collector's Court.

The ordinary presumption of law is that when a certain procedure has to be followed in doing a certain thing then the said procedure must have been followed according to law unless the contrary is proved. In the present case therefore, there is a presumption in favour of the petitioner that when he applied for the entry of his name in the electoral roll of the N. M. R. constituency, then all the procedure laid down for the revision of the electoral roll must have been duly followed and the onus lay on the Respondent to show that it was not done so and that the name of the petitioner was entered in the electoral roll after the republication of the electoral roll. We hold that the name of the petitioner was entered before the electoral roll was republished, and it is not correct that his name was entered on the day of the nomination.

(b) It was next urged that the revising authority in dealing with the application of the petitioner as to the entry of his name in the electoral roll of the N. M. Rural constituency did not observe the last proviso to rule (7) 1 and consequently the entry of his name in the said electoral roll was improper. Regulation 4 lays down that the revising authority has full jurisdiction to hear and determine all claims and objections which have been duly made and after such enquiry and after hearing such persons as to him may appear necessary to order any addition or alteration in the electoral roll. There is nothing on the record to show that it was, in any way, brought to the notice of the revising authority that the name of the petitioner appeared in the electoral roll of the urban constituency and he was therefore not entitled to have his name entered in the rural constituency and the revising authority inspite of that knowledge ordered his name to be so entered. It appears to us that no objection was preferred to the application of the petitioner by any one, and he had all the qualifications of being ordered as a voter in the N. M. Rural constituency, so the revising authority ordered his name to be entered as such.

It is clear that he had jurisdiction to pass the above order, though erroneously, it cannot be said that his order is improper. The celebrated dictum of Lord Hobhouse, (25 Bom. 337, at 347 P. C.) is to the same effect. It is as follows :—

"A court has jurisdiction to decide wrong as well as right. If it decides wrong, the wronged party can only take the course prescribed by law for setting matters right, and if that course is not taken, the decision however wrong cannot be disturbed. The real complaint here is that the execution court construed the Code erroneously. Acting in its duty to make the estate of Nagappa available for the payment of his debt, it served with notice a person who did not legally represent the estate and on objection decided that he did represent it. But to treat such an error as destroying the jurisdiction of the court is calculated to introduce great confusion in the administration of law."

The above dictum has been quoted with approval by Mukerji A. C. J., in the full bench case of Hirdaynath Rai *vs.* Ram Chander Bose (22 C. W. N. at 783), and the Lordship after quoting the above dictum observed as follows :—

"Since jurisdiction is the power to hear and determine it does not depend either upon the irregularity of the exercise of that power or upon the correctness of the decision pronounced, for the power to decide necessarily carries with it the power to decide wrongly as well as rightly."

His Lordship further at page 754 observes :—

"It is plain that however erroneous the order may be, it is not an order made by a court without jurisdiction. It is on the other hand, an order made by a court of competent jurisdiction acting with material irregularity in the exercise of its jurisdiction. The order cannot be consequently be deemed null and void."

It is thus perfectly clear from the above remarks that where an officer has jurisdiction to decide a matter and he decides it, though erroneously, his decision cannot be said to be null and void or improper. The party aggrieved is clearly at liberty to impugn it and may in an appropriate proceeding invoke the aid of a superior tribunal to set it right. Rule 9 (6) provides that any person can apply to such authority as may be appointed in this behalf by the Local Government for the amendment of any electoral roll for the time being in force, and the Local Government by notification in the Gazette may direct the preparation of a list of amendments thereto.

The Respondent or any person who may have found himself aggrieved with the order of the revising authority therefore could have applied under the above rule for the amendment of the electoral roll, but no such action was taken by any one, and the order therefore, cannot be said to be null and void or improper. It was said that the Respondent had no notice of the claim or of the order passed by the revising authority and consequently did not raise any objection to the petitioner's application for the entry of his name afterwards by way of amendment, but there seems to be no provision either in the Rules or the Regulations that each and every voter should be informed of every claim for the entry of a name or of the order passed thereon. Regulation 3 (5) lays down that if at the time of the revision of the electoral roll a claim is made, a notice will be put up outside the Court house of the same and the evidence of the election clerk shows that it was so done and the Respondent did not take any advantage of it and did not raise any objection at the proper time. As to the order passed by the revising authority Regulation 5 provides that the electoral roll so amended shall be republished in the manner prescribed in Regulation 2, and it was done and it cannot now be said that the Respondent had no notice of the order. We are, therefore, of opinion that the entry of the name of the petitioner in the electoral roll of the N. M. Rural Constituency was not improper.

(c) Rule 9 (3) of the Electoral Rules provides that the orders made by the revising authority shall be final and the electoral roll shall be amended in accordance therewith and shall, as so amended, be republished in such manner as the Local Government may prescribe. The words "final" in the above rule clearly suggest that the order passed by the revising authority cannot be questioned before the Returning Officer or before the election tribunal. In Stowe *vs.* Joliffe (9 L. R. O. P. 734) it has been held that the register (the electoral roll) is conclusive not only on the Returning Officer but also on every tribunal which has to enquire into election, except only in the case of persons prohibited from voting by any statute or by the Common Law of Parliament, that is, persons who from some inherent or for the time irremovable quality in themselves, have not either by prohibition of statute or Common Law the status of Parliamentary electors, such as Peers, women, persons holding certain offices or employments under the Crown, persons convicted of crimes which disqualify or the like. This case was followed in the Pembroke Borough Case (5,O.M. and H., 135) where Mr. J. Channel at page 144 observed as follows :—

"When it is said that the register is to be conclusive what is meant is that the errors in it must stand. If it were always absolutely correct, there would be no importance in saying that it was to be conclusive. It seem to me that the policy of the legislature has from the time of the Reform Act of 1882 until the Ballot Act been to make it necessary to raise all questions as to right to vote in the registration court and to do this by preventing their being raised at any other time or in any other manner."

The same view has been taken in the I. E. P. cases; B, Vishnath Jha *vs.* Swami Vidyanath (Jagat Narain's I. E. P. page 54 at 56); Rawalpindi and Lahore divisions (Jagat Narain's I. E. P. vol. 2, page 149 at 147); Saran South (I. E. P. vol. 2 page 171) Bengal Marwari Association (I. E. P. vol. 2 page 34); and Dacca case (I. E. P. vol. 3, page 175 at 178.)

We therefore hold that the order of the revising authority is binding on us and that we have no power to question its correctness or legality or the legality or the correctness of the entry made in accordance therewith in the electoral roll.

(d) In view of the above findings this does not arise. Issue No. 4. We agree with the conclusions arrived at by the Returning Officer and are of opinion that the proposer and seconder of the petitioner are identical with the persons whose electoral numbers are given in the nomination paper as the numbers of such proposer and seconder.

Issue No. 5:—It is conceded that the non-filing of a return of election expenses will not by itself disqualify the petitioner from maintaining the petition but will only serve to disqualify him from standing as a candidate for a period of 5 years, as laid down in rule 22 (4)

It is extremely doubtful if a candidate whose nomination paper has been rejected is required to lodge a return of election expenses. The petitioner has in this case lodged a return and the question does not arise.

As to the return of election expenses being delivered to the Returning Officer himself, we do not find any provision in the Rules or in regulations to that effect.

Issue no. 6:—It is clear from our findings on issues 1, 3, and 4 that the nomination of the petitioner was rejected improperly and without any justification. The English as well as Indian cases show that the moment the Returning Officer has improperly and without justification refused to receive a nomination paper presented to him within the time prescribed, the

presumption arises that the result of the election has been materially affected. Improper refusal of a nomination paper by the Returning Officer is in our opinion so grave an irregularity that this presumption would require the strongest and most conclusive proof for its rebuttal and lies very heavily on the Respondent to rebut the presumption so raised. The English cases (on the point) are :

Slington case (1901) 5 O'M. and H., 120 ; North Durham case (1874)2 O'M. and H. 152 ; North Meath Case (1892)4O'M. and H. 185 ; Davies *vs.* Kesington (1874) L.R.-9 C. E. 720.

The Indian cases on the point are :—

Rohtak case (Jagat Narain's I. E. P. vol. 1, page 57 at page 61).

Calcutta South (Jagat Narain's I. E. P. vol. 2, page 60 at page 62); Golaghat case (Jagat Narain's I. E. P. vol. 2, page 83 at 84).

There were about 30,000 voters on the list, and only 2,591 voted for the Respondent and 2,373 for Piare Lal. There is nothing on record to show that if the petitioner had been nominated, none of the above voters had voted for him. There is nothing to show that the result of the election has not been materially affected. We therefore hold that the improper rejection of the nomination paper of the petitioner has materially affected the result of the election.

Issue no. 7:—We hold that the constituency in which the petitioner claimed to be a voter was rightly described in the nomination paper and the latter part of the issue does not arise.

The result is that the election of the Respondent is void.

Respondent to pay Rs. 200 as costs to the petitioner.

J. J. W. Alsop

Raja Ram

Shamshul Hasan

THE PUNJAB LEGISLATIVE COUNCIL

KARNAL NON-MUHAMMADAN RURAL

CHAUDHRI DULTI CHAND...*Petitioner*

versus

CHAUDHRI NATHWA...*Respondent*

The vote of one Chuhar, who claimed to be a voter registered as Chohar, was held to be valid, the word "Cholar" being held to be a misprint for the word "Chuhar".

Where the petition only alleged that bribery had been committed, and no particulars were given, it was held that to allow the petitioner to give particulars would be an abuse of procedure.

The election of the Respondent was impeached among others on the grounds of bribery, treating undue influence, publication of false statements, the hiring and using of public conveyances and fradulent devices.

The Respondent traversed these charges in his written statement, and in certain cases claimed that the charges should be struck off as particulars were not given.

Certain preliminary issues were framed. The order recorded on them is attached as an appendix to the report.

It is contended that one Cholar, son of Chatra, Rajput, voted, whereas the voter's name according to the list was Chuhar, son of Chatra, Rajput. Cholar, who has appeared states that his name is Cholar and nothing else and that he did vote and was entitled to vote.

The question is whether Chohar's vote can stand. We have been referred to Rogers On Elections vol. 2, page 220, where similar cases were referred to. The most striking is the Oldham case. 1869. 1 O'M. and H., page 153, in which a vote given by a man named Bradshaw as Mills, the names given in the register, was allowed to be valid, in the present case the difference between Chuhar and Cholar written in the vernacular is so slight that we are of opinion that Chuhar is a misprint for Cholar and that Cholar's voto be allowed as valid.

All other charges on which evidence was given were disposed and rejected on facts.

APPENDIX TO THE REPORT

This issue relates to the sufficiency of particulars and the propriety of allowing the furnishing of fresh particulars at trial.

As regards list "B" of the petition, it merely states that bribery took place in certain villages. Rule 22(2) of the Punjab Electoral rules provides that "full particulars of any corrupt practice which the petitioner alleges including as full a statement as possible as to the names of parties alleged to have committed any corrupt practice and the date and place of the commission of each such practice" shall be given in the list appended to the election petition. We accept the view set forth in the Kangra-cum-Gurdaspore (M. R.) case (Jagat Narain's I. E. P. vol. 2, page 103) where in similar circumstances it was remarked that to allow the furnishing of further particulars at this stage would be an abuse of procedure. A similar view was taken in in the Amritsar City case (Jagat Narain's I. E. P. vol. 2, page 10).

M. M. L. CURRIE

MUNNA LAL

KHARAK SINGH

BIHAR AND ORRISSA LEGISLATIVE COUNCIL

NORTH-EAST DARBHANGA NON-MUHAMMADAN RURAL

DHANRAJ SHARMA...*Petitioner*

versus

MAHANT MANMOHAN DAS...*Respondent*

It can not be said that the addition of the prefix "da" and suffix "ba Khas" make the name of a person different from that entered in the electoral roll, as these are contractions of "Daskhat" and "Ba Qalam Khud" (by own open) respectively.

Disqualification follows automatically failure to lodge the return of election expenses within time and publication in the Gazette is not necessary for the disqualification to take effect. In

this case it was held that even a defeated candidate, who did not file the return of election expenses within time was automatically disqualified, even though the disqualification is not published in the Gazette.

Disqualification so far as the local Council is concerned can be removed by the local Government and that for the Central legislature by the Governor-General. The removal of the disqualification by the Governor-General in respect of the Central legislature is not necessary in order to give legal effect to the removal by the local government of one's disqualification in respect of the local Council.

The petitioner's nomination paper has been rejected on two grounds ;—(1) the signature of the proposer does not agree with the entry in the electoral roll, and (2) the candidate is ineligible under rule 5 (4), part 2 of the Electoral rules.

The only difference between the signature in the nomination paper and the entry in the electoral roll is that there is a prefix 'da' and a suffix 'ba khas'. The signature having been in Hindi the proposer used those words as contractions of daskhat (signature) and ba khas (by my own pen). This is the customary mode of signature in Hindi and the learned Returning Officer was not justified in rejecting the nomination paper on the first ground.

As regards the second ground it is contended on behalf of the petitioner that he was not suffering from any disqualification and even if he was disqualified this disqualification has been withdrawn by the Local Government under the proviso to rule 5(4) of the Behar and Orrissa Electoral rules.

The position that the petitioner did not suffer any disability because no Gazette notification to that effect has been produced cannot be supported. Rule 19 of the Electoral rules requires the return of expenses to be filed within 35 days from the date of the publication of the result of an election; while rule 5 (4) lays down that the failure to lodge the return within time will make the candidate ineligible for election for 5 years from the date of such election. There is no dispute that the petitioner was an unsuccessful candidate from this very constituency at the general election of 1926. The result of this election was published in the Gazette of 8th December 1926, while the return was lodged by the petitioner on the 13th January 1927, that is after more than 35 days. Therefore he became *ipso facto* disqualified. There is no provision in the

rules that the disqualification need be published in the Gazette. As we read the rule, this disqualification follows automatically the failure to lodge the return within time.

The question is whether this disqualification has been removed by the local government. The petitioner filed before the Returning Officer an affidavit with a copy of the letter of the personal Assistant to the election officer to show that the disqualification was removed by the Local Government by an executive order and that this fact was communicated to all Returning Officers by a letter of which the number and the date were given therein. No counter affidavit seems to have been filed, and the Returning Officer does not appear to have taken any notice of the information in the letter annexed to the affidavit or to have referred to the communication stated therein. In order to do substantial justice between the parties we sent for the order removing the disqualification from the office of the Chief Secretary specially as we found that the petitioner had not merely been allowed to stand as a candidate from this constituency, in a bye election of 1930, but also elected as a member of the Council and lodged his return of expenses in due time. The order has been received and seen by us.

It is, however, urged by Mr. P. R. Das counsel for the Respondent that the petitioner should have got his disqualification removed by the Governor-General under the proviso to rule 5 (4) of the Legislative Assembly Rules and not having done that the disability to stand for the local Council still attaches to him. Or in other words the contention is that unless the disqualification in respect of all the legislative bodies is removed a person cannot be eligible to stand as a candidate for any of them.

We are unable to accept this contention which receives no support from rule 5 (4) of the Bihar and Orrissa electoral rules and 5 (4) of the Legislative Assembly Rules to which reference has been made, or from any recognized authority. If the contention be sound then the proviso to rules 5 (4) authorising the Local Government to remove any disqualification becomes nugatory. As we read the rules the provision is made that the failure to lodge a return of expenses in time in respect of election to any legislative assembly (that is the Council of State, the Legislative Assembly or the Local Council) will entale disqualification under the Bihar and Orrissa Electoral rules in respect of elections to the Local Council and under the Assembly rule in respect of an election to

the Central Legislature while the disqualification so far as the Local Council is concerned came be removed by the Local Government and that for the Central Legislature by the Governor-General. It would be contrary to the spirit and the wording of the rule if we hold that the removal of the disqualification by the Governor-General in respect of the Central Legislature is necessary in order to give legal effect to the removal by the Local Government of one's disqualification in respect of the Local Council. We hold that the subsistance of the disqualification in respect of the Central Legislature does not affect the petitioners eligibility to stand for election for the Local Council.

We find that the nomination paper of the petitioner is valid and has been wrongly rejected. We report that the election of the Respondent is vide, and that the nomination paper of the petitioner be accepted and the election be allowed to proceed according to law. We also recommend that the petitioner get his costs from the Respondent which we assess at Rs. 80.

AMARNATH CHATTERJI
SACHCHIDANAND SAHAI
SAIYID NOORUL HASAN

THE PUNJAB LEGISLATIVE COUNCIL NORTH-EAST TOWNS (NON-MUHAMMADAN) CONSTITUENCY

SRIMATI LEKHWATI... ... *Petitioner*

versus

MR. TEK CHAND ... ... *Respondent*

The improper rejection of the Respondent's nomination paper was held to have materially affected the result of the election. Where a candidate made an appointment of his election agent by saying "I hereby declare that Lala Somat Prasad B.A., LL.B., will be my agent", it was held that this was sufficient compliance with the rule requiring the appointment of an election agent, specially when no form was prescribed for such appointment.

This is a petition by Srimati Lekhwati, wife of Lala Summat Prasad of Ambala. The petition sets forth that Srimati Lekhwati was a candidate for election to the Punjab Legislative Council for the North-East Towns Non-Mohammadan Urban constituency in the bye-election of 1933. The nomination paper of the petitioner was rejected by the Returning Officer on the objection taken by the Respondent on the ground that a female was ineligible for election. The objection was bad as the sex disqualification in question had been removed by Punjab Government notification no. 5009.— L. Home Department (Elections), dated the 28th October 1926.

Mr. Tek Chand admitted that the sex disqualification had been removed, but he stated on solemn affirmation that at the time he took the objection he was not aware of this. He took a new objection that the petitioner delivered four nomination papers but only one declaration as to her agent. Three of the nomination papers were invalid on the ground that they were not accompanied by any declaration, and the fourth nomination paper was invalid because the declaration which accompanied was bad in law.

The following issues were framed;

1. Is the nomination of Shrimati Lekhwati bad on account of the wording of the declaration which she gave to the Returning Officer ?

2. Who is responsible for costs?

Issue 1.—Rule 11 (5) of the Punjab Electoral rules states :—

"Every nomination paper delivered under sub-rule (3) shall be accompanied by a declaration in writing subscribed by the candidate that the candidate has appointed or does thereby appoint as his election agent for the election either himself or some other person."

The commissioners have not sent for the original records as it is admitted that the decalation filed by the candidate was in the following terms :—

"I hereby declare that Lala Summat Prasad, B.A., LL.B., will be my agent."

The objections taken are:—(a) that the declaration does not say for what election Lala Summat Prasad was to act as agent, and (b) that it does not use the words, "I have appointed" or "I do hereby appoint." In the opinion of commissioners both these objections are ill founded. The words "election

agent" in the declaration in question must be taken to mean "agent for the election," specially as the election was a bye-election.

As to objection (b) the words no doubt are not in the best possible form, but no form has officially been prescribed; and in the circumstances the words used mean that Shrimati Lekhwati appointed Lala Summat Prasad to act as her election agent.

Thus the declaration is not invalid and at least one nomination paper is valid.

In the opinion of the commissioners the result of the election has been materially affected by the improper refusal of the nomination of the petitioner Shrimati Lekhwati; and consequently the election of the returned candidate, Mr. Tek Chand, shall be void. It appears that the amendment referred to in the petition was not included in the copy of the rules in the possession of the Returning Officer. In consequence of the unfortunate objection, which would not have been made if the parties or the Returning Officer had a copy of the rules up to date, Mr. Tek Chand has been put to the expenses of infructuous election.

Thus the responsibility for costs does not rest with Mr. Tek Chand alone, and we recommend that Rs. 50/ be paid as cost by him.

F. W. Skemp

Kharak Singh

Dwarka Prasad

BIHAR AND ORRISSA LEGISLATIVE COUNCIL

PATNA UNIVERSITY

MISS SHOILA BALA DASS...*Petitioner*

versus

MAULVI SAIYID ABDUL HAFIZ...*Respondent*

When the Respondent only pleads that there has been an improper acceptance or rejection of votes, and that position is sought to be supported by a mere reference to the forms themselves, it was held that this plea is not in the nature of a re-crimination within the meaning of rule 42, and consequently

the question can be gone into even though no notice as required by rule 42 is given.

The words "any Gazetted Officer" in regulation 66 of Bihar and Orrissa Regulations include Gazetted Officers outside the province.

The absence of name and description of an elector in an inessential part of the voting paper does not vitiate the voting paper when the identity of the voter is established otherwise.

Where the name of a voter in the electoral roll was entered as S. K. P. Sinha, District Engineer Gaya, while in the declaration paper after having signed his name correctly, he put down the address as Mahadeo Sri Ghat, Gaya, and a voter whose name was entered as Jamna Prasad, signed as J. Prasad; it was held that these discrepancies did not vitiate the voting papers concerned; as there was no doubt as to the identity of the voters.

When the address given on the envelopes supplied by the Returning Officer who was the Vice-Chancellor of Patna University to voters for sending the voting papers to the former was "To The Vice-Chancellor, Patna University (The Returning Officer Patna University, Patna)" but the Returning Officer instructed the post office that letters for the Vice-Chancellor Patna University, should be delivered at the university office, and 5 voting papers (4 of them being for the petitioner) posted in such envelopes reached the university one day too late, as the university office was situated in a different postal circle from the Vice-Chancellor's residence, and consequently the said votes did not reach the Returning Officer within time and were rejected.

Held by the majority of the Commissioners that the post office not being an agent of the Returning Officer, delivery to the post office was not delivery to the Returning Officer, even when it was shown that but for the instructions about the delivery of letters given by the Vice-Chancellor, the voting papers would have reached him in time, the voting papers could not be counted as valid. But it was held that there had been a mistake in the use of the form prescribed for the envelope,

which materially affected the result of the election, and therefore the election of the Respondent was void (the majority in favour of the Respondent being only one). Since it was held that the votes could not be counted as valid, the petitioner's claim for seat was rejected.

Held, per Sachchidanad Sahai, Commissioner, that the Commisioners have power to count the votes not received within the time prescribed, not only with a view to determine whether the result of election had been materially affected by any mistake in the use of the form of envelope, but also that the Commisioners were empowered to count these votes as valid for the purpose of rule 45 of Bihar and Orrissa Election rules, and to declare that the petitioner had been duly elected in place of the Respondent whose election they had declared to be void.

The petitioner Miss Shoila Bala Dass and the Respondent Maulvi Abdul Hafiz were the only two nominatsd candidates for the Bihar and Orrissa local Legislative Council from the Patna University Constituency at the last general election. Sir Sultan Ahmad, as the Vice-Chancellor of the university, was the Returning Officer for the said constituency under the regulation. He was appointed a member of the Round Table Conference in England and left Patna for Europe on the 28th August 1930. In his absence the Officiating Registrar of Patna University, as the Extra Returning Officer, performed the duties of the Returning Officer. On the 5th September 1930, he issued ballot papers to the registered electors along with declaration forms, smaller envelopes to contain the ballot papers, and a bigger envelope with address noted thereon and a letter of instruction. The letter of instruction contained following direction among other things.

"Put the smaller envelope enclosing the ballot paper and the declaration paper in the envelope addressed to me and return it to me by post so as to reach me not later than 3 P. M. on the 24th day of September 1930".

The bigger envelope which was to be sent to the Extra Returning Officer according to this direction bore the following address :—

"To the Vice-Chancellor, Patna University (The Returning Officer Patna University Constituency), Patna."

Five envelopes were registered for despatch on the 23rd of September 1930. These envelopes were not received by the Extra Returning Officer on the 24th September but were received by him on the next day and could not be counted by him. As a result of the counting of votes at 4 o'clock on the 24th of September 1930 at the University Office, the Respondent was declared to have received 100 votes as opposed to 97 votes received by the petitioner. The office of the university was within jurisdiction of the Bankipore post office while the residence of Sir Sultan Ahmad, who used to hold office as Vice-Chancellor was within the ambit of the Patna General Post Office. Sir Sultan Ahmad had issued instructions to the Post Master of the General Post Office, Patna, before his departure for Europe that letters addressed to the Vice-Chancellor should be delivered at the University Office.

The petitioner's case is that the Extra Returning Officer should have mentioned Bankipore Post Office in the envelopes to be returned with the ballot papers and that this mistake in the use of the address on the envelopes issued to the electors has resulted in the delay in the receipt of five ballot papers referred to above. She also contends that the receipt by the Patna General Post Office should, in the eye of law, be deemed to be a receipt by the Returning Officer, and these votes should therefore be counted, in favour of the candidate. It is also submitted that the extra Returning Officer erred in law in rejecting the ballot papers Nos. 110, 132 and 290 as invalid on the ground that the top of the declaration form was not filled in with the name and description of the voters, although the voters signed the declaration form in the presence of the attesting officer to whom each one of them was personally known. It is urged that the failure on the part of the Extra Returning Officer to count the ballot papers received by the Post Master, Patna General Post Office on the 24th and redirected by him and the improper rejection of the ballot papers Nos. 110, 132 and 260 have materially affected the result of the election, and after counting these ballot papers the election of the Respondent may be determined void and she may be declared as duly elected.

The Respondent has filed a written statement contending that there has been no mistake in the use of the form by the Extra Returning Officer and that the ballot papers received by him on the 25th September 1930 cannot on any account be counted in favour of the candidate. He also contends that the ballot papers 110, 132 and 260 have been rightly rejected, and

in case the view of the Extra Returning Officer is found incorrect, the voting paper no. 127, rejected on the same ground, should also be counted. It is also pleaded that the Extra Returning Officer should have rejected the ballot papers Nos. 160 and 296 as they were attested by Gazetted Officers outside the province, and further that 12 votes mentioned in paragraph 21 of the written statement were wrongly rejected on the ground that the declaration forms were not found within the bigger envelope and outside the smaller one containing the ballot papers.

An objection is raised by the learned Counsel for the petitioner that the special points taken by the opposite party with regard to the improper acceptance or rejection of votes referred to in paragraphs 21 and 22 of the written statement are in the nature of recrimination and cannot be considered by the Court because of his failure to comply with the proviso to rule 42 of the Bihar and Orissa Electoral Rules.

The following issues have been framed :—

(1) Whether the outer envelopes supplied were not in accordance with law ?

(2) Whether the receipt of the envelopes in question by the Post Master of Patna amounted to receipt of the same in the circumstances of the case by the Returning Officer ? Whether the voting papers therein should be counted ?

(3) Whether the rejection of ballot papers Nos. 110, 132 and 260 has been improper ?

(4) Whether the ballot papers no. 127 ought also not be counted ?

(5) Whefher the ballot papers 169 and 296 ought to have been rejected ?

(6) Whether ballot papers referred to in paragraph 21 of the written statement ought to have been rejected ?

(7) Whether these ballot papers referred to in issues 4, 5 and 6 can be taken into account without the filing of a recriminatory petition under rule 42 in compliance with the proviso to the said rule ?

(a) Whether the election is liable to be declared void and the petitioner entitled to be declared duly elected ?

Issue No. 7 :—Rule 42 provides that when any candidate other than the returned candidate claims the seat for himself, the returned candidate may give evidence to prove that the election of such candidate would have been void if he had

been a returned candidate and a petition had been presented complaining of his election. The proviso requires that the returned candidate shall not be entitled to give such evidence unless he has within 14 days from the date of the publication of the election petition given notice of his intention to the commissioners and made a deposit of Rs. 1,000 and procured the execution of the bond referred to in rule 36. The sub-rule 2 states that every such notice shall be accompanied by the list of particulars of corrupt practices required by rule 33. It seems therefore that rule 42 comes into operation when the position of the candidate is sought to be challenged on the ground of any corrupt practice and when evidence is sought to be given to prove that the election of the candidate (other than the returned candidate) would have been void if he had been the returned candidate. In the present case no evidence is given nor is any evidence necessary to be given on behalf of the Respondent to show that the election of the petitioner would have been void if she had been a returned candidate. All that he pleads is that there has been an improper acceptance or rejection of votes by the Extra Returning Officer and that position is sought to be supported by a mere reference to the forms themselves. In the next place it is necessary to consider whether the result of the election has been materially affected by the improper refusal of any voting paper by the Extra Returning Officer and for that purpose the votes said to have been improperly accepted or refused have all got to be taken into account in order to determine whether the result of the election has been materially affected. We think therefore that the special pleas taken by the Respondent are not in the nature of a recrimination within the meaning of rule 42 and call for our consideration. This disposes of issue No. 7.

Issue No. 6:—I next take up issue No. 6 about which there can possibly be no room for controversy. The smaller envelopes containing the ballot papers in question do not appear to have been received with the declaration paper in the larger envelope as required by regulation 67. Regulation 73 (c) provides that where the elector has failed to comply with the provisions of regulation 67, the Returning Officer shall endorse the word "rejected" on the back of the declaration and keep it with the connected ballot paper in a separate bundle. Clause (d) of that regulation lays down that the Returning Officer should open only such envelopes containing ballot papers as are not rejected under regulation 67 and 73 (c). Therefore the only ballot papers in closed envelopes

which can be taken into account by the Returning Officer, are those which are accompanied by properly authenticated declaration letters. The evidence of the Extra Returning Officer shows that the smaller envelopes were not accompanied by the declaration papers. And these were not visible. He was therefore perfectly justified in rejecting the ballot papers in question. This view receives support from the case of the Punjab Landholders (2 I. E. P. 210).

Issue No. 5:—Issue No. 5 relates to the acceptance of ballot papers No. 179, and 296 by the Returning Officer, which, it is contended by the Respondent, should have been rejected on the ground that the attesting officers were Gazetted Officers outside this province; one was a Gazetted Officer in Bengal and the other in the United Provinces. Regulation 66 affords sufficient answer to this contention, because it lays down that any Gazetted Officer of Government may attest a declaration. Having regard to the fact that the registered electors of the University constituency may reside outside the province, the Government did not naturally intend to limit the attestation to Gazetted Officers in this province only. The definition of the word Gazette "as Bihar and Orrissa Gazette" in the rules does not affect the operation of Regulation 66. There are several rules in the Bihar and Orrissa Electoral rules in which provision has been made for publication in the Gazette, and it is therefore, that the word has been defined to mean 'Bihar and Orrissa Gazette., This does not and cannot mean that only the Gazetted Officers of the Bihar Government can attest a declaration form. In our opinion the ballot papers Nos. 169 and 296 have been rightly accepted by the Extra Returning Officer.

Issues No. 3 and 4:—Issues nos. 3 and 4 may now be conveniently taken up, and relate to the rejection of four ballot papers by the Extra Returning Officer on the ground that the name and designation of the elector were not filled up after the word. 'I' in the elector's declaration. This description is not, in our opinion, a fundamental part of the form. What is necessary is that the elector's identity should be established without any doubt whatsoever. The elector's name and number on the roll were filled up by the University office on the top of the declaration paper. The elector has appended his signature and adress. There is authentication by a Gazetted Officer of the signature in his presence by the elector, who, it is stated, is personally known to him. There can be no possible room for a mistake in identity, and therefore the omission to fill in the name and the designation after the word, 'I' does not, in our opinion,

invalidate the declaration paper at all. When the identity is fixed, what does it matter if the name and description is wanting in an inessential part of the form. The principles of justice, equity and good conscience, to which appeal was made by the learned counsel for the Respondent, do not certainly warrant the rejection of these four ballot papers.

Special defects are said to have occurred in respect of two ballot papers nos. 260 and 110. In the form the voter's name in the electoral roll stand as S. K. P. Sinha, District Engineer, Gava while in the declaration paper after having signed his name correctly he put down the address as Mahadeo Sri Ghat, Gaya. If the elector ceases to be a District Engineer and changes his address, would the statement of the present address invalidate the declaration paper and the elector's right of franchise, when his name and number are there put down in the form by the University Office, and he has signed his name quite corrrectly and the signature is attested by a Gazetted Officer, to whom he is personally known? In respect of no. 110 the name on the declaration paper appears as J. Prasad. In this case also the name Jamna Prasad had been written on the top of the form by the University people, and the Gazetted Officer to whom he is personally known attested the signature as that of the elector. Therefore there can be no doubt as to the identity of the voter. In the case of Henry *vs.* Armitage reported in 12 Q. B. D. 257, the abbreviation 'Wm' was considered a sufficient statement in a voting paper of the Chritian name 'William.' In our opinion the Extra Returning Officer was wrong in having rejected the four ballot papers referred to in issue nos. 3 and 4.

This rejection, however, does not of itself, materially affect the result of the election, because on scrutiny we find that three out of these four votes were recorded in favour of the petitioner and one in favour of the Respondent. Therefore the total in favour of the petitioner would come upto 100, while that of the opposite party to 101, and the latter would have still a majority of one vote. It may be mentioned in passing that the smaller envelope containing the voting paper in favour of the petitioner was found open in one case, and if it had not been pasted or fastened when the bigger envelope was opened by the Returning Officer and the declaration paper examined, this could not probably be taken into account. But no question was put to the Extra Returning Officer on this point and it will not be fair to presume that it had been received by the Returning

Officer in an open envelope, specially when no such vote appears in the order of rejection.

Issues 1 and 2:—We now take up issues nos. 1 and 2 which are the most material in this case. The following facts are undisputed in this case:—

1. Sir Sultan Ahmad, as the Vice-Chancellor of the Patna University was the Returning Officer for this constituency.

2. He left for Europe on 28th August 1930.

3. His functions as the Returning Officer were performed, in his absence, by the Officiating Registrar of the University as the Extra Returning Officer.

4. The said Registrar issued on the 5th September 1930, under regulation 64, the voting paper to each elector along with a small envelope to contain it, the declaration paper, a bigger envelope with address and a letter of instructions.

5. The letter contained the following instructions: (a) enclose the ballot paper in the smaller envelope, and (b) put the smaller envelope and the declaration paper in the envelope addressed to me and return it to me by post so as to reach me not later than 3 P. M. on the 24th day of September 1930.

6. The addresses on the envelopes supplied to each voter by the Extra Returning Officer is printed and is as follows:—"To the Vice-Chancellor, Patna University, (The Returning Officer Patna University Constituency) Patna."

7. Five such envelopes with ballot papers were registered and posted on the 23rd September, received in the Patna G. P. O. on the 24th and delivered through the Bankipore Post Office to the Officiating Registrar (The Extra Returning Officer) at the University Office on the 25th.

8. The residence of Sir Sultan Ahmad, who used to receive there the letters addressed as Vice-Chancellor, lies within the jurisdiction of the Patna General Post Office.

9. The University Office is situated within the ambit of the Bankipore Post Office.

10. Sir Sultan Ahmad issued an instruction to the Post Master, Patna, before his departure that letters for the Vice Chancellor, Patna University should be delivered at the University Office.

The petitioner complains that the Extra Returning Officer

should have put down "Bankipore Post Office" in the address on the envelopes supplied to the voters and has by this omission, violated the provision of regulation 64 and committed a mistake in the use of form (15) provided for in the said regulation. Regulation 64 runs as follows :—

"With the voting papers, the Returning Officer shall send an envelope addressed to himself in form No. 15, a smaller envelope with the number of the ballot paper entered on its face and a letter in form 16.

The next relevant regulation is regulation 67 which makes the following provision :—

"After recording his vote the elector shall enclose his ballot paper in the smaller envelope, fasten up the smaller envelope, and enclose it with the declaration paper in the large envelope which he shall send by post to the Returning Officer so as to reach him not later than the hour fixed under regulation 16 for the closing of the poll. Envelopes received after that hour shall be rejected."

The form of the envelope is provided in form 15 at page 114 of the regulation and stands as follows

"To The Returning Officer.

.....Constituency

.....(Station and Address)."

The question for consideration is whether Bankipore Post Office should have been entered on the envelopes supplied.

In the case of a contract it is the ordinary rule that if the proposer has prescribed or authorised any particular mode of communication, he cannot dispute the sufficiency of that mode and must take any risk of delay or miscarriage attaching to the acceptor's action in confirmity with the request or authority (vide Pollack and Mulla, Indian Contract Act, 5th edition, page 39). Townsent's case (L. R. 13 p. 148) decided that a notice of allotment sent to the allottee to the address given by him was sufficient, although owing to insufficiency of the address arising from his negligence, the notice never reached him.

These principles cannot fully be applied to the present case and it cannot be held that the receipt of the envelopes by the Extra Returning Officer on the 25th September is sufficient because it is not a matter of contract between him and the voters and the question concerns an innocent third party, namely the returned candidate, and also because of the

positive enactment that the votes must reach the Returning Officer before the fixed hour of the 24th and those received after that hour must be rejected. But there can be no escape from the conclusion that when the Extra Returning Officer concerned prescribes or authorises any particular mode of communication he must take due care to put the address in proper manner so as to ensure a prompt delivery.

Now the evidence of the post office witnesses shows that the registered letters in question would have reached the Returning Officer—Sir Sultan Ahmad—on the 24th September, had he been here, because these would have, in ordinary course, been delivered to him at his residence—a short distance from the Patna post office. Again if "Bankipore Post Office" had been written, these letters would also have been delivered at the University post office before the appointed time on the 24th. The evidence of Abdul Subban is that all letters addressed "as Patna" will come to the Patna Post Office, unless some other post office is mentioned there, and that the registered bag containing the five letters in question were sent by him to the Bankipore post office at 9-30 A. M. following the instructions of Sir Sultan Ahmad. These letters were as matter of fact received in the Bankipore post office on the 24th September but in as much as there is only one delivery from that post office, and the delivery is sent out at 9 A. M. these registered letters sent from the Patna General Post Office after 9-30 A. M. could not be delivered that day, but were delivered on the following day, i. e. the 25th. It is therefore clear, that if Bankipore post office had been written on the covers, these covers would not have suffered any delay. In our opinion the omission in this respect amounts to a mistake in the use of the form within the meaning of rule 44 (c) of the Bihar and Orrissa Electoral rules.

Rule 44 (c) lays down that if the result of the election has been materially affected by any non-compliance with the provisions of the Act or the rules or regulation made thereunder, or by any mistake in the use of any form annexed thereto, the election of the returned candidate shall be void. It is therefore necessary to consider whether the result of the election has been materially affected by this mistake in the use of the form. We have opened the envelopes, scrutinised the declaration forms and the ballot papers and find that four voters have registered their votes in favour of the petitioner and one infavour of the opposite party. We have already held in dealing with issues 3 and 4 that three ballot

papers for the petitioner and one for the opposite party have been wrongly rejected by the Extra Returning Officer, with the result that the votes for the petitioner and the Respondent are to be counted as 100 and 101 respectively. Had the five envelopes, delayed in delivery owing to the mistake in the use of the form, been received in time, these would have been valid votes and there would have been an addition of four votes in favour of the petitioner and one in that of the Respondent; hence the total of the petitioner (104) would have exceeded that for the opposite party (102).[v] It follows that the result of the election has been materially affected by the mistake in the form referred to above.

The next question arises whether the votes inside the envelopes received on the 25th September can be counted so as to declare the petitioner as duly elected. As already stated, there is an imperative command in the regulation 67 that votes received after the specified hour shall be rejected. This enactment is binding not merely on the Returning Officer, but also on the election court, and therefore, the votes in question are invalid and cannot be added to the number of votes in favour of the petitioner, although it is permissible to consider them to see if the result of the election has been materially affected by the delay in delivery owing to the mistake as to the proper address in the form.

It is however, urged by the Counsel for the petitioner that the receipt by the Patna Post Office on the 24th is tantamount to a receipt by the Returning Officer and therefore the ballot papers were received by the Returning Officer in the eye of law, before the appointed hour and cannot therefore be rejected. Regulation 67 provides that the envelopes should be sent as to reach the Returning Officer before the fixed time. There is no provision in the rules or regulations for a receipt by the agent of the Returning Officer, and as a matter of fact if the whole scope of the enactment be considered, it will appear that the functions of the Returning Officer can be done only by the Returning Officer, or by the Extra Returning Officer. It is in our opinion imperative for the validity of the voting papers that they should reach the Returning Officer before the appointed time.

It was urged that in as much as Sir Sultan Ahmad instructed the Post Master of the Patna General Post Office to deliver all his letters to the University Office, he constituted the Patna Post Office as his agent, and therefore receipt by it is a sufficient receipt within the meaning of regulation 67.

We are unable to accept this contention. The Post Master was not constituted any agent of the Vice-Chancellor for receiving letters, his only function being to deliver the letters at the University Office (evidently through the Bankipore Post Office). If this can be called the creation of agency, then the agency was created for the limited purpose of transmitting the letters for delivery and not that he was constituted an agent for receiving the letters. The instruction was conveyed in a general way on the 30th July 1930, as Vice-Chancellor and not as Returning Officer. In our opinion, the receipt by the Panta Post Office in the ordinary course of business cannot, by any stretch, be treated as a receipt by the Returning Officer.

Several Indian cases were referred to before us by both the parties—13 Madras 242 and 23 C. W. N. 77 by the petitioner and 4 C. W. N. 103 and 22 Bombay 415 on behalf of the Respondent.

The case of Harihar in 23 C. W. N. 77 merely raises a presumption that a registered letter properly directed reached its destination at the proper time. But when the undisputed fact is that the envelopes in question did not reach there destination till the 25th of September, no question of presumption arises. In Madras case we find a statement that *post office is an agent of the addressee, but the observation* must be read as limited in meaning to the facts of that particular case. There an attachment was placed under the Code of Civil Procedure of letters in the post office addressed to the judgment debtor, containing currency notes sent by the claimant for grains purchased by him from the judgment debtor. When the claimant wanted to get back these letters from the post office, it was held that post office was the agent of the judgment debtor who was the addressee, and therefore the letters could not be returned to the purchaser. This view is based on the position that where delivery of a thing is requisite to pass the property, it is generally sufficient to deliver it for transmission by the post office, but that is not the case here. To apply isolated dicta from the judgment of a case where the facts are in essential particulars different, is as observed in the well known case of Quinn *vs.* Leathan, a manifest abuse of judicial precedents.

On the other hand in the case of Baikantha (4 C. W. N. 103) in which the revenue sent by money order did not reach the collector in time and property was sold, the contention that the post office was the agent of the collector and the

payment to it should be taken as payment to the collector was negatived. Similarly, in 22 Bom. 415, where the balance of the purchase money was sent by the auction purchaser by post and reached the court after the due date, it was held that the payment was not in time and the post office was not an agent of the court. Moreover, the question came up for consideration before an election court in the case of Punjab Landholders (2 I. E. P. 128.) After stating that there was no obligation on the Returning Officer to make special arrangements to take delivery of the voting papers from the post office, the election commissioners proceed to observe that the post office was clearly an agent of the petitioner and not of the Returning Officer.

We are unable to hold that the Patna Post Office was the agent of the Returning Officer, and the receipt of the envelopes by it was a receipt by the Returning Officer within the meaning of regulation 67.

It is unfortunate that there was a mistake in the use of the envelopes and this has resulted in a delay in the delivery of 5 voting papers. But this delay cannot, in the face of the express provision of regulation 67, authorise us to count them as valid. We cannot read into the regulation words which do not exist and say that the rule must be read as subject to the provision, that the envelopes, received late through the negligence of the post office or that of the Returning Officer, should not be rejected. If we have to take that view, we shall have to add the words "except those delayed through the negligence of the post office or the Returning Officer" after the words "aftet that hour" and before the words "shall be rejected." To do so will be contrary to the established principles of interpretation of statutes.

Reliance has been placed on the provision in rule 45 of the Bihar and Orissa electoral rules (that the commissioners in reporting that a particular candidate has been duly elected shall have regard to the provision of rule 44) and it is contended that the five votes which reached late should be counted as valid votes and four added to those received by the petitioner. We are afraid the scope of rule 45 has been completely misconceived. It merely lays down that the commissioners while reporting that a particular candidate has been duly elected shall have regard to provisions of rule 44. They will have firstly to consider whether the election is void under rule 44 and then they will have to consider whether there has been any improper acceptance of any nomination

(in a case where the candidate challenges the nomination paper of the returned candidate) or improper rejection or refusal of votes, and then to a finding whether the number of valid votes would turn the scale in favour of the petitioner. It does not mean that the votes which are invalid under the regulation are to be declared valid, nor does it in any way alter or control the provisions of the regulations, as to the validity and the counting of votes.

Issue No. 8:—From what we have said above it follows that the election of the returned candidate is void but that the petitioner cannot be declared to have been duly elected.

AMAR NATH CHATTERJI

SAIYED NOORUL HASAN

Two points have been raised in this case on behalf of the petitioner Miss Shoila Bala Das, the first is whether or not she is justified in claiming to her credit certain votes which did not reach the Acting Returning Officer within the prescribed time, under the circumstances mentioned in the majority report; and the second whether under the rules we have the right to report that the election be declared void or to go further and to report also that Miss Dass be declared duly elected if we take the view that the votes not received by the Acting Returning Officer within the prescribed time should be counted as actually cast for her. Now on the first point we are unamimous that the votes viz. Ex. 2 to 2 D did not reach the Returning Officer within the prescribed time entirely owing to the mistake in the printed address on the envelopes containing the votes, and I adopt for this view the reasons given in the report by my two learned colleagues. I have, therefore, the misfortune of differening from them on the second point stated above. My colleagues seem to be of opinion that while we have authority (under rule 45) to count these votes for the purpose of reporting that the election already held be declared void, we cannot (according to their view) count these votes as having been actually given to Miss Dass and cannot therefore report that she should be declared elected under rule 45.

In other words, we have power and can and are counting certain votes in favour of Miss Dass not received within the prescribed time with a view to determine whether the result of the election has been materially affected by any mistake in the use of the form. But at the same time my learned colleagues are of opinion that we have no power and

cannot count these votes in her favour under rule 45 for the purpose of reporting that she should be declared elected on account of provision of Regulation 67, which lays down the envelopes received after that hour shall be rejected. It follows that while the provision of rule 44 is not controlled by regulation 67 (in the matter of reporting that an election be declared void), the provision in rule 45 is so controlled, in the matter of our reporting that a particular candidate be declared duly elected. In my opinion, the distinction so sought to be drawn by any colleagues is anomalous and untenable in view of the distinct provision made in rule 45 that "in so reporting (i. e., whether "the returned candidate or any other party to the petition who has.....claimed the seat has been duly elected"), the commissioners "shall have regard to the provisions of rule 44." What does "shall have regard to the provision of rule 44" in rule 45 mean? It means that all the provisions of rule 44 on which an election can be declared void equally apply in case of a declaring candidate as validly returned under rule 45. Rule 45 shows that our power under that rule is exactly the same as our power under rule 44. If certain powers are vested in the Commissioners under rules 44 and 45 which had the force of law, then these powers cannot be taken away by regulation 67 framed under the said rule. Logically if one rule is controlled by regulation 67 then it necessarily follows that the other rule will also be controlled by regulation 67 and *vice versa*. Regulation 67 is a direction to the Returning Officer who is to proceed on footing that the envelope received after the prescribed time is to be discarded without considering (as under the present circumstances) the validity or invalidity of the votes contained therein. But here we are considering the validity of the votes. The Returning Officer has not the power even to open the envelopes received after prescribed time, whereas, we have such power. Hence, Miss Dass is entitled to have it reported under rule 45 read with rule 44 a declaration made in her favour of having been duly elected, which includes as a ground for such declaration of her votes not received within the prescribed time due to "any mistake in the use of any form annexed thereto", such as we have unanimously held was the case here which (as we have further held) has justified us in reporting that the election be declared void. Apart from that, I think that the case under discussion is also covered by the earlier provision made in clause (c) of rule 44 which deals with the "refusal to accept a vote". In considering this point I shall first discuss the

legal aspect of form 15 i. e. the outer envelope, in which the declaration and the ballot papers were to be enclosed. The face of this envelope was printed thus :—"To the Vice-Chancellor, Patna University, Patna". If this address be read with form 16, i. e. the direction issued to the voters then it will come to this—the voters were told that if you vote in the prescribed form after observing the formalities of the regulations, and if you would post the same so as to reach witin prescribed time at the place mentioned in the envelope then your vote would be accepted and recorded in favour of the candidate to whom it is cast.

In this case the voters having done all that they were called upon to do, were entitled to have their votes accepted (and not rejected); and the fact that their voting papers did not reach the Acting Returning Officer in time was clearly due not to any Reaches or negligence on their part or on the part of post office, but wholly to the action of the Vice-Chancellor, on which they had absolutely no control and for which they cannot at all be held responsible in law. But for the Vice-Chancellor's directing the post office that (in his absence) the voting papers be sent to the University Office, the votes would have positively reached their destination as printed in the form of envelopes within the prescribed time. The view I take is fortified by the decision (of their Lordships of the Privy Council) in the case of Hari Har Bannerji *vs.* Ramsahai Roy reported in 23 C. W. N. page 77 (P. C.), in the course of which their Lordships expressed the view (at page 90) that if " a letter properly directed containing a notice to quit is proved to have been put into the post office, it is presumed that the letter reached its destination at the proper time according to the regular course of business of the post office, and was received by the person to whom it was addressed. That presumption would appear to their Lordships to apply with still greater force to letters which the sender has taken precaution to register. " What was the legal aspect of this presumptive notice to the addressee ? The addressee was held by their Lordships to the Privy Council, to be deemed to have actually received the same and then his liability was determined on that footing. This case is much stronger than above, as we have not to depend upon any presumption but on established fact that the voting papers in this case were all posted duly registered, and the evidence on the record is clear and specific that but for the Vice-Chancellor's directing the post office (as mentioned above), all the voting papers which were not considered, by the Acting Returning Officer, on the ground of reaching late,

would have reached within the prescribed time, and would have been delivered at the place mentioned in the address within that time. My view is further supported by the principle laid down in I. L. R. 9 All. page 367 at page 385. Townsend's case (L. R. 13 E. Q. 148) decided that a notice of allotment sent to the allottee to the address given by him was sufficient although, owing to the insufficiency of the address, the notice never reached him." In the present case also the address of the addressee was supplied by the addressee himself, viz. the Returning Officer. I consider that in the eye of the law, the ballot papers duly reached the Vice-Chancellor, the Returning Officer. I confess I do not, therefore see why the petitioner should be made to suffer if something went wrong, not by reason of the default on the part of her voters but solely due to the action of the Vice-Chancellor, who was the then Returning Officer. I therefore think, for reasons stated above, that she is entitled to a report in law and equity of her having been duly elected being made in her favour.

Secondlly, I consider, the legal effect of form no. 16, i. e., letter of intimation to the voters. This from was signed by the Extra Returning Officer and which intimated to the voters that the declaration form and the ballot should reach this officer on such and such date and such and such time. According to this intimation the ballot and declaration were to reach the Extra Returning Officer and not to the Returning Officer, but the Extra Returning Officer also sent envelopes, i. e., form 15 printed as stated above. The Registrar is connected with the University since its location in an area served by the Bankipore Post Office, the Registrar knew that the envelopes when addressed to the Vice-Chancellor, Patna University, Patna, were always delivered to him by Patna Post Office to his residence in a area served by the Patna Post Office. He knows also that the letters so addressed are also delivered to the present Vice-chancellor by the Patna Post Office, and he also must be presumed to know that if a letter be redirected from the Patna Post Office to Bankipore Post Office for delivery to the Patna University Office there will be delay of one day. The Registrar being a high official of the University, must be presumed to know that letters addressed to the Vice-Chancellors, Patna University, Patna, are delivered to the Vice-Chancellors at their private residences by Patna Post Office. It is also in evidence that once the Vice-Chancellor held the counting of votes in the last bye-election at his residential house.

Under such circumstances he was, in my opinion, bound to have made an arrangement to receive delivery of the

letters at the place and address mentioned on the envelope. It is true that he was not bound to send a man to the post office when the proper address was given on the envelope but he was bound to do so to take delivery of envelopes in case of incorrect address.

In my opinion, therefore, in the eye of law, the following principle of section 3 of the Transfer of Property Act should be applied in this case. "A person is said to have 'notice' of a fact when he actually knows that fact; or when but for wilful abstention from an enquiry or search which he ought to have made, or gross negligence, he would have known it, or when information is given to, or obtained by, his agent under the circumstances mentioned in the Indian Contract Act, 1872, section 299" and on the above principle also the Commissioners have power in law and equity to count the votes in her favour but received beyond the prescribed time, and to report to the local Government that Miss Dass should be declared as elected.

In conclusion, I would like to add that apart from the above considerations there is an additional important fact, that in the matter of counting the votes, the Acting Returning Officer did not comply with the provisions of regulation 71. He does not seem to have complied with the provision, embodied in it, to "fix a date, time and place for the counting of votes, after the close of the poll." In this case, the poll was closed at 3 P. M. on the 24th September 1930, and the counting of votes was done immediately after that at 4 P. M. on that date.

Had the Returning Officer observed regulation 71 which must have been framed on a certain principle the voting paper would have very probably reached him before the counting of votes had begun, instead of (as they actually did) after the counting of the votes had been concluded.

SACHCHIDANAND SAHAI, *Commissioner*

CONCLUSION

We are all satisfied that there has been a mistake in the use of the form (15 of the regulation) and this has materially affected the result of the election and therefore the election is void and the Respondent has not been duly elected. The majority are also of opinion that the petitioner is not entitled to be declared duly elected.

Parties to bear their own costs.

AMARNATH CHATERJI
SAIYED NOORUL HASAN
SACHCHIDANAND SAHAI

UNITED PROVINCES LEGISLATIVE CONCIL SAHARANPORE DIST. NON-MOHAMMADAN RURAL

PANDIT BRIJ NANDAN LAL...*Petitioner*

versus

PANDIT MOTI LAL BHARGAVA ... *Respondent*

Failure to specify the name of the sub-division in a nomination paper where a constituency is sub-divided into several sub-divisions, invalidates a nomination paper

A mandatory provision of law has to be obeyed exactly; a directory provision my be obeyed substantially. Without deciding whether the rule-requiring the name of the sub-division to be given in the nomination paper was mandatory or merely directory, it was found that in this case there was not even a substantial compliance with the rule.

Pandit Brij Nanadan Lal, Rai Bahadur Seth Khuba Chand and the Respondent were three candidates for election to the United Provinces Legislative Council from Saharanpore District Non-Muhammadan Rural constituency at the last general election. The nominations of Pandit Brij Nandal Lal and Rai Bahadur were refused by the Returning Officer. The Respondent, the only remaining candidate was returned unopposed.

On the pleadings of the parties the following issues were framed :—

1. Did the failure to specify the sub-division of electoral roll in which the candidate, proposer and seconder were entered as voters invalidate the nomination paper ?

2. Were the candidate, the proposer and the seconder identical with the persons whose electoral numbers are given in the nomination papers at the numbers of such candidate, proposer and seconder ? If they are not identical, how far does it effect the result of the proceedings ?

Issue No. 1 :—As appears from the electoral roll, there are little over 38,000 voters on the roll. The electoral roll is divided into nineteen sub-divisions. One polling station represents each sub-division and separate serial numbers are assigned to electors entered in each polling area.

The nomination paper filed by the petitioner omitted to give the name of the sub-division on which the name of the candidate, the proposer and the seconder were entered. The Returning Officer rejected the nomination paper on that ground.

Rule 11 (3) of the United Provinces Electoral rules provides that the nomination paper shall be completed in the form prescribed in schedule 3. The prescribed form shows that the nomination paper shall, amongst other things, contain the name of the constituency on the electoral roll of which the candidate's name is registered as an elector, and his number and the numbers of his proposer and seconder in the electoral roll of constituency. A footnote designated by an asterisk referring to the 8th, 10th and 13th entries of the nomination paper requires that in a case like the present, where the electoral roll is sub-divided and separate serial numbers are assigned to the electors entered in each sub-division in which the names of the persons concerned are entered must be given. Evidently the aforesaid provisions of the electoral rules were not complied with in this case.

The object of the rules requiring the mention in the nomination paper of the name of the sub-division of electoral roll in which the names of the candidate, the proposer, and the seconder are registered is to enable the Returning Officer to discover the identity and eligibility of the persons concerned. It can not be denied that the petitioner as the chairman of the District Board, Saharanpore, and as a special magistrate was personally known to the Returning Officer. But it is not in evidence that it was also known that he was an elector in the constituency. Nor is it in evidence that the proposer and the seconder were also personally known to him.

The aforesaid provisions in schedule 3 requiring the name of the sub-division to be entered in the nomination paper can be taken to be either mandatory or directory. It is settled law that a mandatory enactment has to be obeyed and fulfilled exactly and that a directory enactment has to be obeyed substantially. In this case, there was not even a substantial compliance. So the nomination paper was bad.

As the English law on the subject differs materially from the Indian law, it will serve no useful purpose to discuss the English authorities laid before us on this point. The Indian rulings cited before us show that there is no settled law on this point. Two cases Howrah Municipality N. M. R. (Jagat Narain's Report of Indian Election Petitions volume 3, p. 207 and Balamau N. M. R. vol. p. 288) appear to support the petitioner's contention. Similarly, two rulings (Punjab North-East Town case N. M. and Upper North, reported on pages 143, 146 respectively of Jagat Narain's Reports of Indians Election Petitions) support the Respondent's case. In the

cases relied on by the petitioner there was no total omission of the name of the sub-division in the nomination paper, and there was a finding of fact that there was substantial compliance with the provisions of law.

We decide this issue against the petitioner.

Issue No. 2:—This issue does not arise after our findings on issue No. 1. We might, however observe, that on the materials before us we are satisfied that the candidate and his proposer and seconder were identical with the persons whose names and electoral numbers are given in the nomination paper.

Petition fails. Rs. 100/ to be paid as costs by the petitioner to the Respondent.

J. J. W. ALSOP

RAJA RAM

SHAMSHUL HASAN

THE PUNJAB LEGISLATIVE COUNCIL SHAHPUR WEST (MUHAMMADAN)

KHAN SAHEB MALIKPOOR MOHAMMAD KHAN...*Petitioner*

versus

KHAN BAHADUR MIAN MOHAMMAD HAYAT C.I.E...

Respondent

The fact that the name of a person appears twice on the electoral roll does not render his nomination paper invalid under the rules that require that no one shall be entitled to have his name registered more than once on the electoral roll.

On objection by the Respondent, the nomination papers of the petitioner were rejected by the Returning Officer at the time of scrutiny, and the Respondent was declared duly elected.

The common ground on which all the nomination papers were held to be invalid was that the candidate was in his opinion ineligible under rule 6 (a) of the Punjab Electoral Rules, because his name was recorded in the electoral roll of two different constituencies. Rule 6(1) (a) "his name is registered on the electoral roll of the constituency of any other

constituency in the province" was interpreted by the Returning Officer to mean that the candidate's name was to appear in the electoral roll of one constituency only. He supported his argument by a reference to rule 7 (1) of the Punjab Electoral rules which runs;—

"Provided further that no person shall be entitled to have his name registered on the electoral roll of more than one general constituency."

Malik Barkat Ali did not oppose the petition. A clear authority is to be found in Balasore case referred to in Indian Election petitions volume 3 at page 52. In that case the commissioners pointed out that the "acceptance of a nomination paper cannot be said to be the same thing as the casting of a vote"and held that the nomination was valid despite the fact that the candidate's name appeared on the roll of two separate constituencies. With this view we are in entire agreement.

The result of the election was therefore materially affected by the improper rejection of the petitioner's nomination paper.

The election of the Respondent is declared void. Rs. 20 allowed as nominal costs to the petitioner.

M.M.L. Currie
Munna Lal
Kharak Singh

BIHAR AND ORISSA LEGISLATIVE COUNCIL SAMSTIPUR NON-MUHAMMADAN RURAL CONSTITUENCY

RAMASRAY PRASAD CHAUDHRY ... *Petitioner*

versus

MUDESHWAR SINGH ... ... *Respondent*

The addition of the word Babu to a name, or of the words "da" and "Ba Khas", which are abbreviations for "Daskhat" and "By own pen" does not in any way alter the names, and it cannot be said that by the addition of these words the names do not agree with the electoral roll.

It is open to a Respondent to support the order of the Returning Officer on grounds other than those mentioned in the order.

Whether a particular rule is to be considered as a mere direction or instruction involving invalidating consequence in its disregard, or imperative with implied nullification for disobedience, depends on the scope and object of enactment in which the provision is made; and when the nullification would involve general inconvenience or injustice to innocent persons without promoting the real aim and object of the enactment, such an intention is not to be attributed to the legislature.

The object of the provision requiring the mention of the name of the sub-division of the constituency in the electoral roll, is that there should be no difficulty in identifying the person or tracing the name in the list of voters. If this object can be achieved, even without strict adherence to the form by the particulars given therein, it would be contrary to justice, equity, and good conscience to invalidate the nomination paper and to deny the elector a fair and free opportunity of electing a candidate according to his preference.

The nomination paper of the petitioner was rejected by the Returning Officer on the ground that the name of the proposer and seconder did not agree with that in the electoral roll.

The petitioner challenges the order.

It appears that the petitioner filed two nomination papers in one of which the proposer was Rashik Bihari Prasad Choudhry and the seconder was Abji Choudhri; while in the other the proposer and the seconder were Jugbal Prasad Choudhry and Ratia Lal Choudhry respectively. The electoral roll shows the names to be exactly as stated above. The only difference between the electoral roll and the nomination paper is that there is a prefix of the letter "B", a contraction of the word "Babu", before the names in the nomination papers; and the signature of the seconder contains a prefix "Da" and a suffix of "Ba Khas". The prefix "Da" is a contraction of the word "daskhat" and the words "Ba Khas" means "by own pen". This is the usual method of signature. The addition of these words does not in any way alter the names. There is no justification for the view that the names of the proposer and the seconder do not agree with those in the electoral roll. As a matter of fact, in the first part of the order the Returning Officer finds after scrutiny that they are respectively qualified to propose and to second the nomi-

nation. The order of the Returning Officer, as it stands, cannot therefore be supported.

It is, however, urged by Mr. P. R. Das, counsel for the Respondent that the nomination papers are invalid, because they do not contain the name of the sub-division into which the electoral roll of the constituency is sub-divided. It is objected on behalf of the petitioner that it is not open to him to take this ground, as this is not the basis of the decision of the Returning Officer rejecting the nomination papers. In our opinion this objection is not tenable. Rule 37 provides that the procedure applicable under the Code of Civil Procedure shall apply to the hearing of an election petition. It is possible under the Code for a party to support the decision on the trial court on any other ground, and it seems to us that it is permissible for the Respondent to support the order of rejection on any other valid ground. This view receives support from the observations in the Punjab North-East Town reported in volume 2 of Jagat Narain's 'Indian Election Petition'. It is therefore necessary to consider the contention urged by Mr. Das.

Rule 11(3) of the Electoral Rule provides that the nomination paper shall be completed in the form prescribed in schedule 3. Schedule 3 requires that the nomination paper shall contain among other things, the names of the candidates and of the proposer and the seconder, and their numbers in the electoral roll of the constituency in which they are registered. A footnote to the form lays down that where the electoral roll is sub-divided and separate serial numbers are assigned to the electors in each sub-division, a description of the sub-division in which the name of the person concerned is entered, must be given here. In the present case the number in the electoral roll of the constituency in which each of these persons is registered as elector has been correctly put down, but the name of Dalsing Sarai sub-division, in which these persons are registered as electors, has not been entered. There are five polling sub-divisions in this constituency with a little more than 4,000 electors on the roll.

It is contended by Mr. Das, that the provision for description of the sub-division is mandatory and the omission is fatal to the validity of the nomination paper. Though the footnote requires a description of the sub-division, the rule or the schedule or the footnote therein does not expressly declare what shall be the consequence for any non-compliance, or does not provide for any penalty for non-compliance.

Whether the command is to be considered as a mere direction or instruction involving no invalidating consequence in its disregard or imperative with implied nullification for disobedience, depends on the scope and object of the enactment in which the provision is made; and the question is in the main governed by the considerations of convenience and justice, and when the nullification would involve general inconvenience or injustice to innocent persons without promoting the real aim and object of the enactment, such an intention is not to be attributed to the legislature. Now the object of the provision evidently is that there can be no difficulty in tracing the name or identifying the person. If the object can well be achieved, even without strict adherence to the form, by the particulars given therein, it would be contrary to justice, equity, and good conscience to invalidate the nomination paper and to deny the elector a fair and free opportunity of electing a candidate according to his preference. If the whole scope of the rules and regulations be taken into account, it cannot be the intention that a mere omission to describe the sub-division should be fatal to a nomination paper. The saving regulation 19, that no misnomer or inaccurate description of any person or place on the electoral roll or any list shall prejudice the operation of the regulation in respect of such person or place if the person or place is so designated as to be commonly understood, makes the position clear.

A reference was made by Mr. Dass to the observation in Howard *vs.* Boddington (L. R. 2 Probate division 203 at page 211);—"No universal rule can be laid down for the construction of statute as to whether mandatory enactments shall be considered directory only or obligatory with an implied nullification for disobedience. It is the duty of courts of justice to try to get at the real intention of the legislature by carefully attending to the whole scope of the statute to be construed. You can not go further than this that in each case you must look to the subject matter and consider the importance of the provision that has been disregarded, and the relation of that provision to general object intended to be secured by the act and upon a review of the case in that aspect decide whether the matter is what is called imperative or only directory." Applying this test it seems to us in the light of the observations made above that the provision in question is merely directory and not impertaive and therefore a substantial compliance is enough. This view receives support from the recent Palamau case decided in this very province by Mr. Justice Mullick. In that

case the name of the sub-division of the constituency in which the candidate was an elector was not mentioned in the nomination paper. After referring to the fact that the other details were sufficient to indentify the candidate, the election court proceeded to observe:—"Why then must we hold that the provisions requiring the mention of sub-division is mandatory and thus defeat the purpose of the Act ?" The same view appears to have been taken in Shahabad case (2 I. E. P. 173) presided over also by Mr. Justice Mullick. In the Punjab North East Town (2 I. E. P. page 143) the court do not come to any definite conclusion as to whether the provision is mandatory or directory; but consider on the facts of that case that the nomination paper was not a good paper. There the constituency consisted of several municipalities, each having five wards, but the entry in the nomination paper was only "549 (ward no. 5)" The judges thought that there would have been substantial compliance if the entry had been simply "549 the Municipality of Ambala" even without a reference to the ward. Thus this case rather implies that the provision is not imperative. The Raipore North case (2 I. E. P. 146) to a certain extent supports the contention of the Respondent, but it is based on a finding that "The omission can not be deemed to be venial one because there were two other electoral rolls in the constituency which the Returning Officer, would not in the ordinary course of matter, have before him." In the present case the electoral roll was one divided into five sub-divisions, and it was quite easy to find out the names of the proposers and seconders from the numbers given in the nomination papers. As a matter of fact the Returning Officer had no difficulty in finding out the names, because he states in the first part of his order that he has scrutinised the eligibility of the candidate, the proposer and the seconder and finds that they are respectively qualified to stand for election, to propose and to second the nomination. It is a question of fact in each case, whether there has been a substantial compliance with the provisions of law, and we find in the circumstances of this particular case that there has been a compliance. A reference has been made in the nomination paper to Dalsing Sarai in the address of the candidate and although this place is not repeated in it after the numbers on the electoral roll, the Returning Officer had no difficulty in tracing the name, as is clear from the first part of his order.

Moorhouse *vs.* Linney, 15 Q. B. D. 273 at page 278, and Henry *vs.* Armitage, 12 Q. B. D. 257 were cited before us by the learned Counsel for the Respondent. The facts of these cases are quite different and these cases do not assist us in the present

matter. In the latter case the abbreviation Wm was considered as sufficient statement in the voting paper of the Christian name "William", while in the former case in the nomination paper the assenter subscribed his real name as Charles Arthur Barton while it was erroneously entered in the register as Charles Barton was held to be bad. The reason assigned is that a person who sees the nomination may be able to decide whether a candidate is properly assented to by a comparison of the nomination paper and the burgess roll without any further and laborious enquiry. Now the test of further laborious enquiry does not apply to the facts of the present case, where the electoral roll is one short volume with five divisions with an aggregate of over 4,000 voters, and where, as we have said, the Returning Officer did easily find out the name of the proposers and seconders, and this could have been easily found out by any body else. After a careful consideration of the facts and circumstances of the case, we are satisfied that there has been a sufficient compliance with the requirements of the rule.

In our opinion the petitioner is entitled to succeed we report that the Respondent has not been duly elected, and that the nomination paper of the petitioner be accepted and the election be allowed to proceed according to law.

Petitioner to get Rs. 100- as costs from the respondent.

AMAR NATH CHATERJI

SACHCHIDANAND SAHAY

SAIYID NOORUL HASAN

BIHAR AND ORISSA LEGISLATIVE COUNCIL SOUTH-WEST MONGHYR NON-MUHAMMADAN RURAL

JAMUNA PRASAD...*Petitioner*

versus

SRIKRISHNA PRASAD...*Respondent*

There is no rule requiring that the candidate should only sign a nomination paper after the proposer and seconder have signed the same, and the nomination paper is not to be invalidated only because the candidate put his signature on it before the proposer and the seconder.

The petitioner filed two nomination papers, but on the objection of the Respondent they were rejected on the ground that the signatures of the candidate thereon were not genuine, with the result that the Respondent was declared duly elected.

The petitioner has exmained himself and several papers bearing his signature are on the record, many of them having been called for by the Respondent. The petitioner who is a respectable pleader of Gaya swears that the signature on the nomination papers are his. A comparison of the signatures on these nomination papers with those for the Gaya constituency of which he was a candidate and other papers on the record show unmistakably that the signatures on the nomination papers in question are of the candidate himself. On a cursory glance it might seem that the signatures on the nomination paper do not tally with that on the letter produced before the Returning Officer; but after comparing the various signatures we have absolutely no reason to suspect the genuineness of the signatures on the nomination papers. In the next place the evidence of the petitioner on oath stands unrebutted and no reason exists why we distrust his testimony. It is true that the petitioner did not come to Monghyre himself for signing the nomination papers or filing them, but why would the nomination papers be signed by a third party when it could easily have been signed by the candidate himself? We are perfectly satisfied that the signatures of the candidate on the nomination paper are genuine and the learned Returning Officer was wrong in rejecting the nomination papers for reasons given by him.

It however appears from the evidence of the petitioner in this case that he had filled up the column as to the name etc. of the candidate and appended his signature before the proposer and the seconder signed their names on the nomination paper. It is therefore urged on behalf of the Respondent that the nomination papers are invalid and ought to be rejected. A reference is made to rule 11(3) of the electoral rules. It lays down that each candidate shall either in person or by his proposer and seconder together deliver to the Returning Officer a nomination paper completed in the form prescribed in schedule 3 and subscribed by the candidate himself as assenting to the nomination and by two registered persons as proposer and seconder. On the other hand the subscription by the candidate is mentioned in the rule, before that by the proposer and seconder. We should not read into the words of the rule any words which do not exist and say that the proposer and the seconder must sign their names before the subscription of the

candidate himself: when the requirement is merely that the candidate must also subscribe to the paper as assenting to the nomination, that is to say, the naming of himself as a candidate for the constituency. What has been done by the petitioner does not offend the words or the spirit of the rule. This view receives support from the observations made by Hammonds. "The Indian candidate and Returning Officer" :—"The nomination paper must bear the candidate's signature which may cause difficulty if the prospective candidate is out of India. This can be met by the candidate, leaving behind him, before he goes two or three signed nomination papers."

The Q. B. Division case of Hormon *vs.* Park reported in 45 L.T.R. 174 and decided in 1881 was referred to. In this case the nomination paper had been signed by a proposer and a seconder and by 8 other enrolled burgesses. It was subsequently found that the name of the proposer was not on the burgess roll as a person entitled to vote, and thereupon the name of another elector was inserted in its place. It was held that the nomination paper was bad. This case has no application firstly on the ground that the rule under which the case was decided and which required the nomination by two enrolled burgesses as proposer and seconder and the assent by 8 others to the nomination is quite different from the rule under consideration in the present case. Secondly, as stated in the judgment of Grove J. in that case it might have a very considerable effect on the mind, of the assenting burgesses "to know who the proposer and the seconder were and in fact I do not see any other reason for having a proposer and a seconder at all except as respectable persons in whose judgment the other subscribing burguesses have faith" The position before us is not the same, because here the subscription is by the candidate himself and the signatures of the proposer and the seconder can have no bearing on his choice to stand. The case of Harmon *vs.* Park was considered in the subsequent case of Cox *vs* Davis in 2 Q.B.D. 202 at page 205 decided in 1898. The former case was distinguished in it on the ground that "hat case was decided under a different rule" and "it could not be taken that they (the assenting burgusses) assented to another person's name being substituted".

Even if it be assumed that strictly speaking the candidate should have signed his name after the signature of the proposer and the seconder, there is no direction in the rule, as mentioned before, that he must sign after the proposer and the seconder, nor is there any invalidating consequence provided

for in the rules. All that the rule requires is that the nomination paper must be completed in the form prescribed in schedule 3 and subscribed by the candidate himself as assenting to the nomination and by two registered voters as proposer and seconder, and must be delivered before 3 P. M. to the Returning Officer. Therefore, what is required is delivery before 3 P. M. in the form completed in the manner prescribed in schedule 3 and that the nomination paper will not be valid unless it is delivered to the Returning Officer or other persons authorised to receive it before 3 P. M. on the day fixed. Therefore, there has been no departure from the rule and no invalidating consequence can follow.

We hold that the nomination papers filed on behalf of the petitioners are valid and the Respondent has not been duly elected.

Election of Respondent declared void petitioner ordered to bear his own costs as his absence contributed to the view taken by the Returning Officer.

AMAR NATH CHATTERJI

SACHCHIDANANAD SAHAY

SAIYID NOORUL HASSAN

ASSAM LEGISLATIVE COUNCIL

SHILLONG GENERAL URBAN CONSTITUENCY

A. MAC DONALD KONGOR...*Petitioner*

versus

THE REV. JAMES JOY MOHAN NICHOLAS ROY

Respondent

Where the evidence of certain persons not produced by any of the parties was deemed necessary, they were examined as court witnesses.

No election can be in contemplation until a vacancy has actually occurred, and no one can be a candidate within the meaning of election law before that date.

A false statement made in respect of any person's candidature before the time that he became a candidate cannot amount to a corrupt practice within the meaning of Assam Electoral Rules

It is not open to the court to grant relief on any point not clearly raised in the pleadings of parties.

When particulars are given in a petition, the petition can not be rejected for want of better particulars, and further and better particulars can be ordered to be given.

The petition alleges a number of corrupt practices which are said to have been committed either by Mr. Nicholas-Roy or by his agents.

On the 10th of February 1930, a preliminary objection was filed on behalf of Mr. Nicholas-Roy in which he asked that the petition might be dismissed without hearing, mainly on account of the fact that the allegations made against him and his agents were not sufficiently specific. We decided, after hearing arguments, that Mr. MacDonald Kongor's petition was technically in order but further and better particulars were required with regard to several allegations which had been made. These further particulars were filed on the 11th February 1930, on which day the Respondent also filed his written statement. Having regard, however, to some facts which had transpired in the evidence, we considered it necessary in the interests of justice to examine certain persons as court witnesses. The evidence of four court witnesses was, therefore, taken under the provisions of Section 5 of Act 39 of 1920.

Issue no. 1:— The issue is with regard to the allegation that Mr. Roy went round Mawkhar and published to the people that Mr. MacDonlad Kongor had been debarred from standing as a candidate and that he would not stand again at the election which was held on the 3rd October 1929. It is alleged that this is a false statement within the meaning of paragrapah 4 of part 1 of schedule 5 of the Assam Electoral Rules.

It will be seen from paragraph 4 of part 1 of schedule 5 to the Assam Electoral Rules that a false statement in order to be a corrupt practice within the meaning of the rules, must be false statement in relation to a candidate. The question, therefore arises as to whether or not Mr. MacDonald Kongor was a candidate between the 6 th September and 9 September 1929. The learned advocate for the petitioner has argued that his client was actually a candidate even before the last election

was set aside. In this connection he relies upon the fact that during the hearing of the election petition which was filed by Mr. Nicholas Roy against Rai Bahadur Nagendra Nath Choudhri Mr. Mac Donald Kongor applied to be made a party. We are of opinion that there is no force in this contention. The term 'candidate' is defined in section 30 (b) of the Assam Electoral Rules. It is obvious that Mr. MacDonald Kongor's nomination was not filed until the 26th September 1929, and, having regard to the terms of the definition, it is of course obvious that no election could have been in contemplation until a vacancy had actually occurred. Such a vacancy did not occur until the 6th September 1929, and after this date, we find no reliable evidence on the record from which it would be reasonable to infer that Mr. Mac Donald Kongor held himself out as a prospective candidate until the 9th September 1929 when his manifesto was sent to the press for publication.

It is true that an attempt was made to show that his candidature was discussed shortly before the 6th September 1929 at a meeting which was held in the house of U Haju. If such a meeting had really been held it is somewhat curious that Mr. MacDonald Kongor should not have mentioned such an important fact in his evidence. He is, however, silent on the point. Although U. Nowoon Lyongdoh states that Mr. Mac Danold Kongor made a statement at the alleged meeting at U Jaju's house, Jaju himself says that the petitioner came to his house when those who attended the meeting were about to disperse. Even if such a meeting was held, there is no evidence with regard to the nature of any statement which Mr. Mac Donald Kongor may have made at that meeting, and taking the evidence, as we find it, we are not prepared to place any reliance upon the testimony on this point of U Nowoon Lyngdoh and U Jaju and in fact we do not believe that any such meeting was held. We find, therefore, that Mr. Mac Donald Kongor did not become a candidate within the meaning of the Electoral Rules until the 9th September 1929 and that the meeting at the Khasi National Hall, at which Mr. Nicholas Roy is alleged to have made the statement with regard to Mr. Mac Donald Kongor's candidature was held before the time at which the petitioner became a candidate. This being so, even if Mr. Nicholas Roy made a false statement at the meeting, such statement cannot amount to a corrupt practice within the meaning of section 4 of part 1 of schedule 5 to the Assam Electoral Rules.

(On evidence the learned Commissioners did not also believe that the statement complained of was in fact made.)

The result is that, as regards issue no. 1, we are of opinion that the petitioner has not been able to substantiate his case and this issue must be decided in favour of the Respondent.

Issue no. 7:—This issue relates to the allegations contained in paragraph 7 of the particulars dated 9th September 1929 to the effect that Mrs. Nicholos Roy and other agents of the Respondent practised picketting in and around the Mawkhar Polling Station on the 3rd October 1929.

The term "picketing" does not appear to have been defined any where in the Electoral Rules. This expression is, however, used with reference to strikes when watchers are posted at the approaches to a place affected by a strike in order to persuade, or otherwise influence, the persons who work there, to give up their work (See Webstare's Dictionery). On this analogy it is apparently the intention of the petitioner to allege that Mrs. Nicholas Roy and other agents of the Respondent, brought undue influence to bear upon the voters who attended the Mawkhar Polling station to record their votes in favour of Mr. Nicholas Roy, or to refrain from voting for Mr. Mac Donald Kongor.

(The evidenee regarding picketing etc. of voters was disbelieved but the learned Commissioners found that votors and even non voters were allowed access to the polling place, but that no arrangement was made under which voters could record their votes screened from observation.)

The learned advocate for the petitioner asked us to hold that the election is void on account of non-compliance with the provisions of sections 19, 21, 26 of the Assam Electoral Rules. In connection with this inquiry we must follow the procedure applicable under the Code of Civil Procedure and we do not consider that it is open to us to grant relief on any point which has not been clearly raised in the pleadings of the parties. This point with regard to non-compliance with any of the electoral regulations was not raised in the petition. No issue was framed with regard to this matter, and it is obvious that if this point had been specifically taken in the pleadings, it would have been open to the Respondent to adduce further evidence with regard to this matter. Had this point been clearly raised in the pleadings, on the evidence as we find it, it would have been our duty to consider whether or not tbe result of the election had been materially affected by non-compliance with the provisions of the electoral regulations. But,

as things stand, we are not prepared to go beyond the issues which clearly arise from the pleadings of parties.

Petition must be dismissed, but having regard to the non-compliance with rules, we think the parties should bear their own costs.

N. EDGLEY

J. BOROACH.

ARTHER BROWN

INDEX